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# The American Political Science Review

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VOLUME XXII

1928

GEORGE BANTA PUBLISHING COMPANY  
MENASHA, WISCONSIN

1928

P 15158

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THE AMERICAN POLITICAL SCIENCE ASSOCIATION



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# The American Political Science Review

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Vol. XXII

FEBRUARY, 1928

No. 1

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## PHYSICS AND POLITICS—AN OLD ANALOGY REVISED<sup>1</sup>

WILLIAM BENNETT MUNRO  
*Harvard University*

### I

It is just fifty-five years since Walter Bagehot wrote his *Physics and Politics*, a very suggestive book in its day. He began the first chapter of this book with a reference to "the sudden acquisition of much physical knowledge" which had marked the second half of the nineteenth century, and declared it his purpose to show the bearing of these new ideas upon the political conceptions of mankind. That purpose he fulfilled with much ingenuity, pointing out the various lines along which the advance in natural science seemed to suggest modifications in the old theories of the state and of government.

This was only a half-century ago; yet the new physics of Bagehot's day has already grown old. Its basic concepts have been turned inside out and upside down. Its laws relating to the indestructibility of mass and the conservation of energy have been radically amended. Even a generation ago the atom was held to be the ultimate and indivisible unit in the composition of the universe. It was the basis upon which the scientists of the nineteenth century built up an inclusive set of laws and principles relating to the structure of all creation. No one had ever seen an atom, but its existence could be postulated and its properties were held to be knowable.

<sup>1</sup> Presidential address delivered before the American Political Science Association at Washington, D. C., December 28, 1927.

Today, all this is changed. The world is still composed of atoms; but we have discovered that they are neither indivisible, ultimate, nor indestructible. They are not the last word in matter, but are themselves incessantly in process of division into still smaller, highly-energized particles known as electrons. These diminutive units of disembodied electricity, as they may be called, are continually in flight, yet they form part of every atom in the universe. It is quite possible, and even probable, that these electrons are engaged in the business of transforming matter into energy, and energy into matter. If this be so, there is nothing solid in the old sense, nothing static, nothing that is not continually in process of change.

Nor is this all. In Bagehot's day the science of physics was mainly concerned with visible and large-scale phenomena, such as were observable to the naked eye. Today the natural scientist has shifted most of his attention to the study of small-scale and invisible things. The gross appearances no longer mean much to him. The general acceptance of the quantum theory has wrought a revolution in all the exact sciences. Even the chief corner-stone of the old physics, the law of gravitation, has been jolted out of place. Bagehot wrote in an age when scientists looked upon gravity as a force; today we are assured that it is merely one of the properties of space. And space itself is a concern of relativity, hence there is no such thing as absolute position or absolute movement. All things in the physical universe are relative to all things else.

It has been said that no metaphysical implications are necessarily involved in the quantum theory or in the doctrine of relativity, but it is difficult to believe that this can be the case. A revolution so amazing in our ideas concerning the physical world must inevitably carry its echoes into other fields of human knowledge. New truths cannot be quarantined. No branch of knowledge advances by itself. In its progress it draws others along. By no jugglery of words can we keep Mind and Matter and Motion in watertight compartments; hence it is inconceivable that a greatly changed point of view, or a series of far-reaching discoveries, in any one science can be wholly without influence

upon the others, even upon those which are not closely allied.

Science begins by altering the day's routine and ends by transforming our whole orientation toward the social cosmos. The acceptance of the doctrine of evolution (to take an obvious illustration from the past) did not confine its effects to biology, or even to the natural sciences as a whole. It compelled a general recasting of the older ideas concerning the origin of the state and of government; it threw political science into a new dependence upon history, and led Sir James Seeley to declare in one of his famous epigrams that history without political science could have no fruition. It impelled the student of politics to look upon public institutions as part of the whole evolving order of things, like the protoplasmic cell and the living organism.

And so the "sudden acquisition of much physical knowledge" which has marked the first quarter of the twentieth century, quite as conspicuously as the latter half of the nineteenth, would seem to suggest the timeliness of examining once again the old foundations of political science upon which we have built our theories concerning the citizen's relation to his government. Natural science has moved a long way, not only from the teachings of Galileo and Newton, but even from those of Helmholtz and Kelvin; yet too many political scientists are still dallying fondly with the abstract formalism of Locke and Montesquieu, Austin, Blackstone, and Bentham. The science of government is still concerning itself with theories of absolute rights and duties, with old axioms about sovereignty and the general will, the sanction of law, the rule of public opinion, and the mass behaviorism of free and equal men and women who are assumed to be the ultimate atoms in the commonwealth.

It is still in bondage to eighteenth-century deification of the abstract individual man. Both the science and the art of government still rest upon what may be called the atomic theory of politics—upon the postulate that all able-bodied citizens are of equal weight, volume, and value; endowed with various absolute and unalienable rights; vested with equally absolute duties; and clothed with the attribute of an indivisible sovereignty. Under the influence of ideas which were borrowed from the old natural

philosophy we continue to assume that the science of government can be a science only if it is based upon a series of ultimate and fixed uniformities. Our vernacular and our thinking are still heavily saturated with the idea that there are metaphysical principles of human liberty to which all governmental practice must conform. And these principles are embodied in a series of impostor pietisms which stultify the thought of the people and form the greatest of all obstacles to the orderly progress of social control.

So long as the social order was simple, without the unending complexities that have been infused into it during the past half-century, these older formulas were not beyond the power of rational minds to accept—just as the old concepts of natural science were able to pass muster in the days when laboratory experiments were simple and few. But we have now passed into an age when the vast laboratory of world politics is conducting experiments of every kind with unmeasurable rapidity, and we continue the attempt to explain *our* electro-dynamics in terms of mechanics—an attempt which the physicists abandoned a generation ago!

## II

The American philosophy of government has exalted the individual citizen beyond all reason. It treats him as the incarnation of the Unknown Soldier. This is partly the result of our legacy from Puritanism, and in part the outcome of a pioneer insistence upon free scope for individualism. Hence it is the national habit to think of social control and individual freedom in terms of hostility to each other, whereas it is only through the one that the other can be realized under the conditions of today. For even as every molecule of physical matter is conditioned and directed by those with which it interacts, so the individual citizen is similarly motivated and controlled by the influence of those with whom he associates. These influences, moreover, are not radiated upon him most strongly by society as a whole but come from within his own orbit of life. They come directly from the immediate environment—his race, his religion, his political party, his



labor union, his club, his newspaper, and all the rest. These influences are so penetrating, indeed, that for most of our citizenship the dogma of individual freedom is hardly more than a myth. Hence the first problem of political science is not that of adjusting social control to the interests of the individual citizen but of securing and maintaining a fair balance between the various groups to which the individuals belong.

In other words, it is time for political science to step up into line with the new physics by turning some of its attention to the sub-atomic possibilities. We should seek to discover the true reasons for that vast differentiation between good, bad, and indifferent citizenship which is perhaps the most obvious of all the phenomena of politics. We should enquire diligently into the nature and scope of the forces which make each civic atom what he is. And we should discard our allegiance to the absolute, for nothing would seem to be more truly self-evident than the proposition that all civic rights and duties, all forms and methods of government, are relative to one another, as well as to time and place and circumstance. They cannot be translated into unvarying formulas.

Both in the physical world and in the body politic the atoms have this in common, that they are neither ultimate nor indivisible. The individual citizen, when you pull him apart, is first of all a nucleus. He is the creature of a habit-system. But the whole training imposed upon us by civilization is based upon the assumption that human beings can be constrained or induced to modify their natural responses. More particularly they respond to the stimulus of ideas, the electrons of the social universe, and indeed our entire process of civic education—in the schools and colleges, by the press and at the forum—consists in bombarding the human nucleus with ideas. Some get attached, but the vast majority do not. The social atmosphere, like the physical universe, is filled with these invisible units of energy, moving at all rates of speed and penetrating power, gaining lodgment here and there, or departing from some human atom where they have been week-end guests. In the last analysis, the weight of the individual citizen in the body politic is dependent upon the

degree of his receptivity to these rays of intellectual illumination; it is proportioned to the number and quality of the ideas that he assimilates and retains. It is this variableness of response to the stimulus of ideas that largely accounts for the diversity among citizens in relation to their government.

### III

Hence we have the hydrogen citizen. In his journey through the seven ages of man he manages to capture only one electron. His primal instincts have become modified by some single controlling obsession. Militant reformers, in any field, are drawn for the most part from among men and women who belong in this category. The same is true of the die-hards at the other extreme, the reactionaries and the partisans of the hundred per cent variety. They, too, are what the physicist would now call "stripped atoms." Neither of these elements ever contributes much to the orderly progress of government as an art or as a science. To continue the metaphor, it is the precious metals of mankind, not the light gases, that give both stability and movement to the social order. Even as the physical world is a composite of matter and energy, which are no longer regarded as separable, so the world of political opinion is to be looked upon as a composite of numbers and intensity, a product arising from the continuous redistribution of social integrations. To the extent that energy is a substitute for mass, so the intelligence and the intensity with which convictions are held by a minority may offset a considerable deficiency in numerical strength.

Therein lies the flaw in such expressions as "the will of the majority" which suggest a purely quantitative measurement. The means by which a majority comes to be a majority is a matter of far greater importance than the mere existence of a majority as such. The actions and attitudes of the individual in politics become what they are by reason of the influences to which he is exposed, and more particularly the immediate influences, for the effectiveness with which a political idea or ideal can be transmitted is in part dependent upon the proximity of its source. The physicist is not content to know that the electron flies. He

insists on knowing whence it cometh, whither it goeth, and to what purpose. The world is ruled by ideas which possess the power of penetration and lodgment. The electorate is merely the channel through which they become operative. Government is not, fundamentally, either an affair of laws or of men, but of imponderables behind both of them. To these imponderables, which constitute the invisible government, we have given very little of our attention; yet we must do it if political science is to maintain any contact with the realities.

How, then, can the sub-atomic forces which make for the improvement of citizenship be singled out, strengthened, and made more effective to the desired end? At present we have only a hazy notion of what they are, and only in a crude way do we know how they operate. All around us gigantic campaigns of civic education are being carried on, by organizations of every kind, every bit of it inspired by the hope of improving the attitude of the citizen toward his government, and especially his sense of civic duty. A large part of this effort is based upon the naïve assumption that if you only exhort people with sufficient earnestness they can be induced to accept irrational ideas embalmed in the rhetoric of patriotism.

No part of this nation-wide campaign for the promotion of better citizenship utilizes a technique that has ever been examined by scientific methods to discover whether it is adapted to the end in view. To a considerable extent, the money that is being spent upon these so-called campaigns of civic education represents pure futility and waste. The ardent efforts of well-meaning men and women are frustrated by their sheer irrelevance to the end desired.

Perhaps the most striking illustration of this has been afforded in recent years by expensive campaigns for improving the quality of our elective officials by the simple device of bawling at the voter to come out and vote. It is small wonder that these campaigns are accomplishing nothing, for they rest upon formulas concerning civic duty which are not merely unscientific but ridiculous.

Political science, to become a science, should first of all obtain a decree of divorce from the philosophers, the lawyers, and the psychologists with whom it has long been in the status of a polygamous companionate marriage to the detriment of its own quest for truth. The philosopher, when he cannot account for a phenomenon in any other way, ascribes it to some occult quality in the moral nature of man. The psychologist, in like quandary, seeks the explanation by going through his inventory of standardized individual traits, although it ought to be clear that human behaviorism and its consequences cannot be even described, much less accounted for, by the study of the individual in isolation. Every increase in the knowledge of human nature results at once in a modification of human nature; hence it is rather optimistic to hope that social psychology will ever point us the way of explaining, much less controlling, the actions of men in the body politic.

Yet we are sometimes told that "political science must wait on social psychology." If so, it will be a long wait. The essentials of a scientific method are accurate observation, careful experiment, and cautious inference. The social psychologist has shown no exemplary devotion to these essentials. Much of his work remains in "the sublime cloudland of the *a priori*." Still, it is only fair to add, on behalf of social psychology, that it has taken the first step on the way to become a pseudo-science by providing itself with a technical jargon which is incomprehensible to the ordinary man. Much of its effort has thus far been devoted to the describing of commonplace political phenomena in foggy language which no politician could hope to understand.<sup>2</sup>

#### IV

Government, as Emerson once said, is "the greatest science and service of mankind." Yet the science of government has been probably the least successful of all the sciences in building

<sup>2</sup> Take this as an illustration: "Propaganda is the management of collective attitudes by the manipulation of significant symbols. The word attitude is taken to mean a tendency to act according to certain patterns of valuation. The existence of an attitude is not a direct datum of experience, but an inference from signs that have a conventionalized significance."

up a set of principles upon which any body of men can agree. It has not yet caught up with meteorology, which can fairly be said, I think, to rank as the least exact of all the natural sciences. As a result of this backwardness in what may be called the pure science of politics, there has been almost no applied science of government worthy of the name. Government as an art has been so little perfected that, as respects most of the serious problems encountered by the public authorities, there has been no alternative but to rely on the promptings of political intuition.

The results are plainly visible in the great and ever-widening gap which separates government and technology. By the application of science to industry, transportation, communication, and construction we have made extraordinary progress during the past fifty years. But whether the world has made any progress at all, during this half-century, in the art of governing its people is a question that many of those best qualified to speak would answer in the negative. Our rulership over nature has become more commanding year by year; but man's rulership of man has made no such advance. The wheels of government have multiplied, and they are revolving at an increased speed; yet the electorate's control of them is certainly not firmer than it used to be.

Surely there is an element of danger in a situation where our progress runs so fast in all the sciences except the one that ought to be the greatest. For although science may be the basis of civilization, government is the retaining wall that holds the entire structure in place.

Every new application of science to industry makes life more complex, and hence government more difficult; for the difficulties of efficient government in a democracy increase as the square of the newly-created human relations. That is why the big industrial city is so much harder to govern than is the rural area of equal population. The leaning tower of Pisa is deemed to be one of the great wonders of the world, yet it is an infinitely less complicated affair than an urban metropolis like Chicago in which one can find at this very moment, side by side, much of the best industrial technique and some of the worst municipal administration on earth.

To be safe, our progress in the art of government ought to go faster than the advance of applied science; but unhappily it is doing nothing of the kind. It is steadily dropping behind. If the Fathers of the Republic were to return to life, after their long sleep of a century, they would be equally appalled by the stupendous progress of the American people in all material things and by the relative lack of it in the art of government. Would they perceive any marked improvement in the way the laws are made, or the revenues raised, or the taxes spent? Would they note a conspicuous betterment in the caliber of the men elected to public office? Would they find our current political discussions above, or below, the plane represented by the letters in *The Federalist*? To ask such questions is to answer them.

Our immediate goal, therefore, should be to release political science from the old metaphysical and juristic concepts upon which it has traditionally been based; likewise to keep it clear of the sociologists and social psychologists who, if they could have their way, would only get us deeper into the morass of meaningless terminology. It is to the natural sciences that we may most profitably turn, in this hour of transition, for suggestions as to the reconstruction of our postulates and methods. Political science should borrow by analogy from the new physics a determination to get rid of intellectual insincerities concerning the nature of sovereignty, the general will, natural rights, and the freedom of the individual, the consent of the governed, majority rule, home rule, the rule of public opinion, state rights, laissez-faire, checks and balances, the equality of men and nations, and a government of laws not of men.

In place of these formulas it should seek to find concepts that will stand the test of actual operations, and upon these it should begin to rebuild itself by an intimate observation of the actualities. By analogy from the new physics, it should also turn part of its attention from the large-scale and visible mechanism of politics to the invisible and hitherto much neglected forces by which the individual citizen is fundamentally actuated and controlled. More than a half-century ago the new biology suggested to us the abandonment of old ideas concerning the spontaneous

creation of government; today the new physics may well suggest the discarding of our atomic theory of ultimate, equal, and sovereign citizens in a free state. It is doubtless true that the natural scientist, as such, can never guide us to the true purposes and policies which should direct human action in matters of government; but there is at least some hope that by paralleling his objectivity of attitude, and his process of operational study, the political scientist may reach that goal some day.

# THE PERSONNEL OF THE ENGLISH CABINET, 1801-1924<sup>1</sup>

HAROLD J. LASKI

*London School of Economics and Political Science*

## I

A full history of the English cabinet would be one of the seminal works on the technique of representative government; for, as Bagehot was the first to point out, the cabinet has been the primary source of decision in the modern English institutional system. Few books, it must be added, would be so difficult to write. Until 1917, the cabinet was without a secretary or authentic records; and there are even today purists who regret these obvious innovations. What account we have of its working is thus necessarily spasmodic and partial in character. A statesman who took a note of some meeting where his department was affected, a debate in the House of Commons after some dispute which has entailed resignation, a chance entry in a diary, the occasional revelation of autobiography—it is upon materials such as these that we are largely dependent for our knowledge. Even semi-official accounts, like those of Lord Morley and Mr. Gladstone, hardly give us more than the formal outline of the cabinet as it functions.

Yet one clue to its character has been curiously neglected; and it illustrates, as it happens, the nature of the social system in England in a quite special way. We know the men who occupied cabinet office; and by a careful study of who they were we can at least draw some inferences of interest and even importance. These inferences, let it be said at once, will not explain in any way the technique of the cabinet system. But at least they will serve to measure the way in which the changes in the structure of English social life are reflected in the choice of those responsible for the nation's effective governance. •

<sup>1</sup> I am indebted to Mrs. A. Henderson and Mrs. L. Turin, of the London School of Economics and Political Science, for much help in the preparation of the tables presented in this article.



The notes which follow are not intended to do more than point a way to the much more detailed analysis which requires to be made. They deal only with what may be called the modern period. They begin, that is to say, with the formation of the Addington administration in 1801; and they end with the Baldwin government of 1924. They seek to answer certain obvious questions. Who were the men who entered the cabinet in this century and a quarter of history? Were they aristocrats or plebeians? What were their professions? Where were they educated? Is there a difference in the personnel of the cabinet at one period and another? Does, for example, a widening of the franchise mean a widening of the area from which cabinet ministers are chosen? Is there any difference in the type of men attracted to the service of the two parties which, until 1918, were the major political organizations in England? What is the main burden of the results discovered? What suggestions do they imply for the coming years?

Let us be clear, in the first place, about our definitions. The tables which follow will show how considerable and how prolonged has been the place of the aristocracy in the English cabinet. How are we to fix the limits of that class? In England, very fortunately, there has never been an aristocracy of blood; all save the actual holders of peerages are, like the greengrocer and the bricklayer, commoners devoid of legal title to privilege. The English aristocracy, moreover, has always had a singular capacity, elsewhere unequalled, for absorbing external elements; lawyers, doctors, soldiers, sailors, business men, and civil servants have been admitted within its confines. For the purposes, therefore, of this study, the category has been defined as containing those cabinet ministers who have been the sons of men possessing hereditary titles. On this definition, Sir Robert Peel was an aristocrat and Lord Brougham was not; the first Lord Selborne was not an aristocrat, while his son, the second Lord Selborne, was. It follows that the tables below are to some extent weighted against the aristocracy; for there are men who belong to ancient families, like Mr. Chichester Fortescue and Sir William Harcourt, who are excluded from that class.

A word is necessary also upon the assignment of cabinet ministers to their various professions. Those who are called lawyers, for example, do not include any except the men who definitely earned their livelihood as barristers or solicitors. Mr. Gladstone, for example, was called to the bar, but as he never practiced he finds no place among the lawyers. And, similarly, Macaulay, who practiced on the Northern Circuit for a few years (without success) is put, not among the lawyers, but, with Disraeli and Bulwer Lytton and Morley, among the men of letters, on the ground that this was in fact his effective vocation. So, also, the category of soldiers and sailors includes men like St. Vincent and Wellington and Kitchener who were warriors *de carrière*; but it does not include the very large number of peers and their sons who spent a few brief years in the Guards or the Hussars without seeking seriously to make the naval or military profession their life task. Where a cabinet minister went to any British university, account has been taken of it; and where, as in the earlier part of the period was not unusual, a statesman went both to Oxford or Cambridge and to a Scottish university (like Lord Henry Petty) he has been credited to both. For the category of public schools, apart from Eton and Harrow, nine of the principal schools have been investigated. Finally, in discussing the distribution of types among the political parties, Mr. Gladstone's first administration of 1868 has been taken as the starting point, on the ground that the present political labels date most effectively from that period.

## II

In the period 1801-1924, a total of 306 persons held cabinet offices.<sup>2</sup> Table I gives the salient particulars.

TABLE I

Sons of nobility.....	182
Sons of other parents.....	124
Educated at Oxford.....	118

<sup>2</sup> The Lloyd-George war cabinet is counted as having contained five members only. This seems the fairer procedure, since many of the offices were temporary and many of their holders took no part in politics after the war.

Educated at Cambridge.....	81
Educated at other universities.....	26
Educated at Eton.....	83
Educated at Harrow.....	36
Educated at other public schools.....	53
Lawyers.....	42
Soldiers and sailors.....	8
Business men.....	23
Civil servants.....	3
Men of letters and journalists.....	9
Trade unionists.....	8

The interest of this table is considerable. Nearly sixty per cent of cabinet ministers were born of immediately aristocratic parentage; nearly eighty per cent were either at Oxford or Cambridge; twenty-three per cent were Eton men, and over ten per cent from Harrow, while seventeen per cent were from eleven great public schools. Only thirty per cent were dependent upon their own efforts for a livelihood, and of these nearly half were lawyers. In part, the latter fact is to be expected, since the legal profession, as organized in England, is much the most compatible with a parliamentary career; while business men are, as a rule, able at only a comparatively late stage of their careers to devote themselves to politics. It is noticeable that very few civil servants have ever attained the eminence of cabinet rank; and that, thus far, the number of trade unionists is very small. Had this analysis, indeed, ended in 1905, it would have contained the name of no workingman.

Speaking broadly, the aristocracy with which we are concerned consists of a thousand families; but the actual number from which cabinet ministers have been drawn is much smaller. The Cecil family and its relatives, for example, have contributed six cabinet ministers to the total; the house of Grey five; the house of Stanley four; four families have three cabinet ministers each, and twenty-seven families two each. Among commoners, not unnaturally, no such persistent attainment of office exists. Two Gladstones, three Chamberlains, two Harcourts, and two Balfours exhaust

the list. The explanation, of course, is largely personal and economic. A considerable section of the English aristocracy enters Parliament at an early age; and these persons are thus able to take advantage both of family prestige and freedom from material care. With commoners this is much more rarely the case, unless, as with the Chamberlains, the creation of an independent fortune makes devotion to business unnecessary.

The mere totals of this personnel do not, however, give an adequate picture of the evolution that has taken place. The period from 1801 to 1924 is divisible into certain well-marked epochs. There is (1) the period from 1801 to 1831—the *ancien régime* of modern English politics. There is (2) the period from 1832 to 1866, marked by the first Reform Act. There is (3) the period 1867 to 1884, marked by the second, and (4) the period from 1885 to 1905, marked by the third, Reform Act. In 1900 came the Taff Vale decision and, as a consequence, the entry of the trade unions into politics as the Labor party. This gives us another well-defined period (5) from 1906 to 1916, when the emergence of Mr. Lloyd-George as prime minister reaped the fruits of the war period; the final epoch (6) from 1917 to 1924 saw the acceptance of the Labor party as the official opposition and its first experience of office. Each of these periods deserves separate analysis. In our treatment of them it should be noted that each minister is counted separately if he held office, as did men like Gladstone and Disraeli, in more than one period. A number of ministers, therefore, appear more than once in the tables which follow.

TABLE II

*Period I. 1801–1831. Total Number of Ministers, 71.*

Sons of nobility.....	52
Sons of other parents.....	19
Educated at Oxford.....	24
Educated at Cambridge.....	24
Educated at other universities.....	7
Educated at Eton.....	20
Educated at Harrow.....	9
Educated at other public schools.....	13

Lawyers . . . . .	4
Soldiers and sailors . . . . .	2
Business men . . . . .	1
Civil servants . . . . .	1
Men of letters and journalists . . . . .	0

Seventy-three per cent of the cabinet were, therefore, in this period aristocrats. Every cabinet minister was a university man, and some sixty per cent were public school men, of whom Eton provided half. Only one business man attained high office; and the small number of lawyers—all of whom held legal posts—is explained by Lord Eldon's long tenure of the chancellorship. Obviously, in the first period the cabinet was a closely-guarded preserve of the aristocracy.

TABLE III

*Period II. 1832-1866. Total Number of Ministers, 100.*

Sons of nobility . . . . .	64
Sons of other parents . . . . .	36
Educated at Oxford . . . . .	38
Educated at Cambridge . . . . .	30
Educated at other universities . . . . .	10
Educated at Eton . . . . .	27
Educated at Harrow . . . . .	11
Educated at other public schools . . . . .	17
Lawyers . . . . .	12
Soldiers and sailors . . . . .	3
Business men . . . . .	5
Civil servants . . . . .	2
Men of letters and journalists . . . . .	3

The period shows a slight decline (73 per cent to 64 per cent) in the proportion of aristocrats; a slight decline, also, in the proportion of university men; as also a slight increase in the proportion of public school men. There is a perceptible increase in the number of lawyers (partly accounted for by rapid changes in the chancellorship) and in the number of business men. Men of letters, also, appear effectively in the cabinet for the first time.

But, taken as a whole, it cannot be said that the Reform Act of 1832 exerted any remarkable influence on the character of the cabinet.

TABLE IV

*Period III. 1867-1884. Total Number of Ministers, 58.*

Sons of nobility.....	35
Sons of other parents.....	23
Educated at Oxford.....	29
Educated at Cambridge.....	12
Educated at other universities.....	3
Educated at Eton.....	20
Educated at Harrow.....	5
Educated at other public schools.....	9
Lawyers.....	9
Soldiers and sailors.....	1
Business men.....	6
Civil servants.....	1
Men of letters and journalists.....	1

There is, again, in this mid-Victorian period, a slight decline in aristocratic personnel (64 per cent to 60 per cent) as compared with the second period; although, after two reform acts, the degree of its influence remains remarkable. Seventy-seven per cent of ministers were university men, and sixty per cent public school men. There is again, proportionately, a slight increase in the number of lawyers and business men.

TABLE V

*Period IV. 1885-1905. Total Number of Ministers, 69.*

Sons of nobility.....	40
Sons of other parents.....	29
Educated at Oxford.....	35
Educated at Cambridge.....	17
Educated at other universities.....	5
Educated at Eton.....	25
Educated at Harrow.....	9

Educated at other public schools.....	12
Lawyers.....	9
Soldiers and sailors.....	0
Business men.....	6
Civil servants.....	0
Men of letters and journalists.....	1

The proportion of the aristocracy (58 per cent) is practically identical with that of the third period. The percentage of university men is 83—an increase probably due to the reforms of 1854—and of public school men, 65. The other figures show no considerable divergences from those of the previous period.

TABLE VI

*Period V. 1906–1916. Total Number of Ministers, 51.*

Sons of nobility.....	25
Sons of other parents.....	26
Educated at Oxford.....	20
Educated at Cambridge.....	16
Educated at other universities.....	5
Educated at Eton.....	12
Educated at Harrow.....	5
Educated at other public schools.....	8
Lawyers.....	9
Soldiers and sailors.....	1
Business men.....	5
Civil servants.....	0
Men of letters and journalists.....	3
Academic.....	1
Trade unionists.....	2

In this period the most notable fact is that the number of aristocrats is, for the first time, less than the number of commoners. The number of university men remains broadly constant, but the number of public school men shows a distinct decline (from 65 per cent to 50 per cent). There is, also, an increase in the number of lawyers, and the category of trade unionists makes

its first appearance. Broadly, it may be said that this is the first of the periods under discussion in which commoners begin obviously to gain upon the aristocracy. Until 1906, the broadening of the franchise and the improvement of the means of education had not, in one hundred years of cabinet history, seriously affected the hold of the aristocracy upon the pivotal posts of government.

TABLE VII

*Period VI. 1917-1924. Total Number of Ministers, 52.*

Sons of nobility . . . . .	14
Sons of other parents . . . . .	38
Educated at Oxford . . . . .	18
Educated at Cambridge . . . . .	9
Educated at other universities . . . . .	4
Educated at Eton . . . . .	6
Educated at Harrow . . . . .	8
Educated at other public schools . . . . .	11
Lawyers . . . . .	8
Soldiers and sailors . . . . .	1
• Business men . . . . .	4
Civil servants . . . . .	1
Men of letters and journalists . . . . .	3
Academic . . . . .	0
Trade unionists . . . . .	8

The changes represented by the foregoing table, which includes the members of the first Labor government, are obviously profound. The aristocracy represents only twenty-seven per cent, the universities sixty, and the public schools only fifty per cent of the total. There are as many trade unionists as lawyers; and there are twice as many lawyers as business men. Obviously enough, had there been two Labor governments within the period, the influence of the aristocracy on the personnel of the cabinet would have been small indeed. It is clear, further, that the position of the Labor party in the House of Commons means that the decline in the percentage of university men is likely for



a considerable period to be large; as also that the number of trade unionists is likely to remain fairly stable, at some such size as at least one-third of each Labor cabinet.

### III

The statistics may now be analyzed from the angle of party. In the period since 1868 (omitting the coalition government of 1917-22) there have been seven Conservative governments, seven Liberal governments, and one Labor government; to which must be added the Asquith coalition of 1915 in which only experienced and, so to say, professional, parliamentarians found a place. Table VIII presents the same statistics as in previous tables for the different parties involved.

TABLE VIII

1868-1924

<i>Name of Party</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Labor</i>
Sons of nobility . . . . .	40	31	3
Sons of other parents . . . . .	40	42	16
Educated at Oxford . . . . .	38	28	3
Educated at Cambridge . . . . .	16	23	2
Educated at other universities . . . . .	4	3	1
Educated at Eton . . . . .	31	14	0
Educated at Harrow . . . . .	15	6	1
Educated at other public schools . . . . .	13	12	3
Lawyers . . . . .	15	17	2
Soldiers and sailors . . . . .	1	1	1
Business men . . . . .	6	9	1
Civil servants . . . . .	0	1	1
Men of letters and journalists . . . . .	1	5	3
Academic . . . . .	0	0	0
Trade unionists . . . . .	0	2	7

These figures suggest that no very considerable difference has existed between the Liberal and Conservative parties in the period under review. A Conservative cabinet tends to be slightly

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more aristocratic than a Liberal cabinet and to specialize in the possession of ministers who have been at the great public schools. The only man of letters in a Conservative cabinet was Disraeli, but the Liberals have five who earned their living by writing. The Labor cabinet contained three aristocrats, one of whom (Lord Chelmsford) was not a member of the party; and it is notable as having been the first cabinet since 1801 which contained no Eton men. Certain other conclusions suggest themselves. Apart from Mr. John Burns—since Mr. Arthur Henderson's appointment was an accident of the war period—no trade unionist has ever sat in either a Conservative or a Liberal cabinet;

TABLE IX

	Gladstone (1868)	Disraeli (1874)	Balfour (1902)	Asquith (1908)	MacDonald (1924)	Baldwin (1924)
Sons of nobility . . . . .	8	10	12	6	3	9
Sons of other parents . . . . .	11	7	11	14	17	12
Educated at Oxford . . . . .	10	9	11	7	3	12
Educated at Cambridge . . . . .	3	2	6	8	2	4
Educated at other universities . . . . .	1	1	1	1	1	1
Educated at Eton . . . . .	3	9	11	4	0	5
Educated at Harrow . . . . .	0	1	2	3	2	6
Educated at other public schools . . . . .	5	2	5	4	4	4
Lawyers . . . . .	3	2	4	6	2	6
Soldiers and sailors . . . . .	0	0	0	0	1	0
Business men . . . . .	4	1	2	2	1	2
Civil servants . . . . .	1	0	0	0	1	0
Men of letters and journalists . . . . .	0	1	0	1	3	0
Trade unionists . . . . .	0	0	0	1	8	0

and there exists today no member of Parliament belonging to a trade union who, apart from a coalition government, would be likely to find a place there.

It is interesting from this angle to take a number of cabinets in detail since 1868, and to compare them with one another. For this purpose I have tabulated (Table IX) Mr. Gladstone's cabinet of 1868, Mr. Disraeli's of 1874, Mr. Balfour's of 1900, and Mr. Asquith's of 1908; Mr. MacDonald's cabinet and Mr. Baldwin's of 1924 being put alongside for purposes of comparison.

Obviously, there are no very great differences among these cabinets, apart from the Labor government. It will be noticed that, apart from the Asquith cabinet of 1908, and that of Mr. MacDonald, the number of ministers dependent for their living upon their vocation is small; in no case other than the two noted is it more than one-third of the total. Again, there is a tendency for Liberal cabinets to be slightly less aristocratic than Conservative. The predominance of Eton men among Conservative ministers is remarkable, and it is amusing to note that a Conservative prime minister educated at Eton, Lord Balfour, had colleagues almost half of whom were Eton men, while the cabinet of a Harrow prime minister, Mr. Baldwin, has in it the largest number of Harrow men ever collected in a single cabinet. Mr. Gladstone's administration of 1868 was the first cabinet in which no Harrovian, that of MacDonald the first in which no Etonian, found a place.

#### IV

Certain general characteristics of the figures here collected may be noted. In our period, 306 persons held cabinet office, and of them 182 were aristocrats. But if we subtract from the 306 the 93 who earned their living, no less than 213, or practically seventy per cent, were rentiers. Not less remarkable is the small number of professions from which the cabinet has been drawn. Outside the rentiers, practically five categories exhaust the list. No scientist, no engineer, and no doctor<sup>3</sup> has ever been a member

<sup>3</sup> Dr. Addison was, of course, minister of health under Mr. Lloyd-George; but his appointment was hardly less abnormal than that of Mr. Fisher.

of the cabinet; and, with the exception of Mr. Herbert Fisher, whose appearance was an accident of the war, no academic person, though for a brief period both Robert Lowe and Viscount Gladstone were university dons.

It is interesting to discover the parental occupations of the non-aristocratic members of the cabinet in the period. Table X gives these for the 124 persons who form this class.

TABLE X

<i>Parental Occupation</i>	<i>Number</i>
Soldiers and sailors.....	6
Lawyers.....	18
Business men.....	36
Clergymen.....	20
Teachers.....	2
Doctors.....	4
Men of letters.....	1
Artists.....	1
Civil servants.....	1
Rentiers.....	23
Workingmen.....	12

From this table, certain obvious conclusions emerge. It is clear, in the first place, that the distribution of occupations among the parents of cabinet ministers is wider than among the ministers themselves. That business men should form the largest parental class is notable. But it is probably explained by the fact that most of them, like the Goschens and Chamberlains and Peases, were successful business men who were able either to support their sons during a parliamentary career (as Tierney) or to give them an education which permitted an alternative career like the law. The number of clergymen is explained partly by the fact that some of them, as Sir William Harcourt's father, were connections of ancient families and thus able to command political influence, and partly by the fact that all of them were able to give their sons a university education; most, in fact, were comfortably endowed. The number of rentiers, which here includes

members of "county" families, is comparatively small; although had this investigation been concerned only with membership of the House of Commons, or even with minor ministerial posts, it would have been very much larger. It is worth remarking that, apart from Mr. John Burns and Mr. Henderson, no member of any cabinet previous to that of Mr. MacDonald was the son of a workingman.

I have spoken of the educational training of cabinet ministers, and it is perhaps worth while to examine the statistics in some little detail. Among the 118 Oxford men in the list, no less than sixteen colleges are represented. But sixty of the Oxford cabinet ministers were at Christ Church; and Balliol, which is next in the list has only seventeen, being closely followed by Oriel with twelve, and University with ten, respectively. On the basis of these figures, one or two facts are worth noting. The predominance of Christ Church is almost entirely due to its aristocratic connection, particularly in the period before 1867; since that time its degree of representation has declined. Of the Balliol men, all except one date from the epoch of Jowett. The Oriel men are mostly confined within the period when Hawkins and Copleston made it the outstanding college in Oxford; while nearly half of the representation from University College is due to the Cecil family. Of the Cambridge results, somewhat similar remarks may be made. Of the eighty-one Cambridge men who attained cabinet rank, fifty-four came from Trinity alone. St. John's has eleven, and Trinity Hall five, the remainder being distributed among six colleges. In view of its influence in the University, and, especially its connection with Eton, it is a little surprising to find that only two cabinet ministers came from King's College. Of the ministers educated at other universities, nine were from Edinburgh and six from London. It is notable that, except for Mr. Neville Chamberlain's brief attendance at Birmingham, no cabinet minister has so far been produced by one of the newer universities.

There is another interesting angle from which these figures may be analyzed. Dividing cabinet ministers into aristocrats

and commoners, Table XI gives their age at entrance into the House of Commons and the cabinet in three periods within the last century and a quarter.

TABLE XI

	1801-1867	1867-1905	1905-1924	Govt. of Mr. MacDonald	Govt. of Mr. Baldwin (1924)
Age of entrance of aristocrats into the House of Commons.....	25.6	26.5	29.0	32.5	31.2
Age of entrance of aristocrats into the cabinet	45.9	43.4	44.5	55.0	44.0
Age of entrance of commoners into the House of Commons.....	35.9	38.7	40.0	43.4	42.8
Age of entrance of commoners into the cabinet	55.0	52.7	54.4	57.6	51.1

From this table, three obvious conclusions can be drawn. Aristocrats, firstly, enter the House of Commons and the cabinet ten years earlier, on the average, than commoners. The average age, secondly, at which men enter the House of Commons is rising for both classes; for aristocrats it has risen from 25 to 29, and for commoners from 35.9 to 40. The average age, thirdly, at which aristocrats enter the cabinet has slightly declined during the period, as is true also (the MacDonald cabinet apart) with commoners. The high average age at which aristocrats in Mr. MacDonald's cabinet first received such office is, of course, due to quite exceptional circumstances. What is mainly remarkable in the whole table is the immense differential advantage in time which an aristocratic politician receives by reason of his birth.

## V

"In England," wrote Matthew Arnold some fifty years ago,<sup>4</sup> "the government is composed of a string of aristocratical personages, with one or two men from the professional class who are engaged with them." Of the English cabinet system until 1905 this is no unfair account; and if since that time the generalization has lost some part of its force, it is still by no means negligible.

For, anyone who reflects upon the statistics here collected will be driven to certain irresistible inferences. The three reform acts of the nineteenth century had little effect upon the position of the aristocracy in politics. Policy may have changed, but the men who made policy came, in much the same degree, from the same origins as their predecessors. Even today, the aristocracy, together with the lawyer and the rentier, possesses a predominance in the personnel of English politics. Though the advent of the Labor party has altered for the moment the proportion of that predominance, it is by no means certain that it will not continue. For, in the first place, the Labor party needs lawyers and, accordingly, offers better prospects of speedy appointment to office than either of its rivals. If, moreover, Labor remains the alternative government, it will attract the more radical-minded members of the aristocracy in the same way that the Liberal party used to do; and in that event, especially if the House of Lords remains unreformed, the aristocratic member of the Labor party will have the same, if not greater, opportunities than he enjoys elsewhere. This thesis, of course, rests upon the assumption that there will be no drastic alteration in the laws of property and inheritance.

For the root of the hold retained by the members of the aristocracy is economic in character. In part, and perhaps mainly, it is derived from the possession of an income which renders these persons independent of the need to earn a living. In a lesser degree, the territorial influence of the aristocracy enables it to find seats for its members with less difficulty, and at an earlier age, than is possible for other classes. The only real competitors

<sup>4</sup> *Mixed Essays*, p. 164.

of the rentier in the Conservative party are the lawyers; for, as has been pointed out, the number of vocations compatible with politics is small, and unless business men have independent means they enter the House of Commons (even more, the House of Lords) too late to embark upon a political career which may lead them to the cabinet. It is worth while noting, moreover, that until 1905 this was also true of the Liberal party; and, since that date, it is significant that the leaders of that party were either lawyers or men of independent means. Nor are there signs that, so far as the Conservative party is concerned, the change is a great one. The party had, in November, 1926, 410 members in the House of Commons. Of these, 53 were lawyers, 53 aristocrats, and 129 rentiers, while 18 were retired soldiers and sailors, and, of the remainder, more than 80 were possessed of means other than their vocational source of income. As in the case of cabinet ministers, there was a difference in average age in the party between aristocrats and commoners of more than ten years. nor is it without significance that most of those likely to attain office in the cabinet in the coming years belong to the three special classes noted.

The position of the business and working classes in the system is peculiar and interesting. The House of Commons has always, since 1832, contained a very considerable proportion of business men, and since 1895 an increasing proportion. There is, however, no sign that they are likely to enter the cabinet in any increasing degree. They enter the House too late to make a sufficient impression upon its leaders; and they cannot, like adherents of the Labor party, rest satisfied with the standard of life which a member's salary makes possible. Where they are outstandingly successful, on the other hand, their sons not seldom enter the House and, later, the cabinet. A business man, therefore, can, within the ambit of our system, found a dynasty of rentiers to whom the cabinet will lie open, even while he can hardly hope to enter it himself.

The position of the Labor member is different. The salary of a member of Parliament, with the possibility, further, of a supplementary income from his trade-union, offers the very considerable



trade-union section of the party the chance of a fairly long parliamentary career at a standard of life which they regard as comfortable. For this section, however, the drawbacks, from the angle of office, are two in number. The period which must elapse before the average trade-unionist can hope for a safe seat from his party sends him into the House later than most other members; while defeat at a general election may, unless he is an official of his union, leave him without employment.<sup>5</sup> He is, moreover, rarely in a position to send his children into the House of Commons; Mr. Henderson is, so far, the only Labor member who has sat in the House with his own sons. The non-trade-union section of the Labor party is, with the exception of the Clyde group, in much the same position as members of the other parties. They are lawyers, rentiers, teachers, doctors, and their ability to pursue a parliamentary career depends upon the same considerations as affect the Conservative or the Liberal. The number of professions compatible with a political career is limited; and, broadly, the trade-union official in the Labor party has the same kind of advantage as the rentier or the lawyer.

A word should be said about the influence of the universities. It has obviously been profound. But, also, it is in a large degree secondary in character, since the men who went to the universities are, for the most part, the men who would in any case have entered the House. Where the university has counted is in the connections it has formed for men who, otherwise, would not have found the avenue to the House as direct as they did. Gladstone's Oxford friendship with Lord Lincoln gave him the opportunity of Newark; without it, he might have had to wait much longer for a seat. And it is clear that neither London nor the provincial and Scottish universities carry with them the same social connotation as Oxford and Cambridge. The claim that the latter are the nurseries of statesmen means but little in the sense that the art of government can be acquired there. But in the sense that they open avenues more easily for those not of the aristocracy, the

<sup>5</sup> One former Labor member was compelled, in 1924, to apply for unemployment relief.

claim is not to be denied. They are an integral part of that government by connection which is still influential in England.

The broad fact is that, even yet, political democracy in England has developed very imperfectly. There is no large equality of opportunity. Were tables similar to the above to be compiled for the cabinets of France since 1870 and the United States since 1789, the results would show an immense difference. In France the government of the Third Republic has been drawn almost entirely from the professional and middle classes; in the United States, although there was a considerable aristocratic and rentier element before the Civil War, the basis of government has been even wider than in France. Neither in America nor in France have the mind and imagination of the middle and working classes been subdued by the aristocracy as they have been in England. English liberty has not been paralleled by equality; and the conditions of English political institutions maintain that submission to the aristocracy by reason of the economic system they involve.

It is, of course, idle to seek to measure the degree of permanence in present English methods. Any aristocratic system which, like the English, has had a considerable degree of public spirit has obvious and great advantages over a purely democratic system. Its members are trained to the art of politics at an early age; and they acquire more easily than others the faculty of command and the ability to use other men gracefully, which are so important. Yet they possess it at a heavy price to the rest of the community. For an aristocracy, however public-spirited, is by its nature exclusive; and the experience it possesses at first hand is bound to be unduly narrow. In a state like Britain, where the equal claim of men on the common good is the touchstone of policy, the differential advantages which the present order implies make against the full understanding of wants by those who are called to rule. The English aristocracy, moreover, has long passed the zenith of its power. It no longer has a monopoly of the qualities which make for effective governance. It may even be said that the problems which confront civilization today are of a kind which call less for the qualities of an aristocracy than almost any others that can be imagined.

If we in England are, indeed, to place the full experience of our society at its service, the barriers of privilege which, as here shown, we still retain are not merely anomalous, but undesirable. We are still living by what Matthew Arnold called our religion of inequality. We still offer special advantages in the search for power to those whose interest it is to prevent the democratization of the present order. To change this order is, doubtless, a delicate and difficult business, since it involves an alteration in the distribution of wealth and inheritance. Yet no society can genuinely humanize its institutions save as it becomes a community of equals. Equality alone breeds responsibility and elevation of mind in the multitude. Our system confers those habits upon a small number of men, but the privileges it offers to birth and wealth prevent their extension to the masses. For when new ideas are changing the perspective of men's habits of thought, those people can most usefully exercise power who see the implications of such ideas. It is the thesis of our system to open the road to authority less to these men than to those sections of society which have most to lose by their introduction and acceptance.

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## THE SEPARATION OF POWERS IN THE EIGHTEENTH CENTURY

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"Justice is the end of government. It is the end of civil society."<sup>1</sup> Thus the authors of *The Federalist* defined the purposes of the government created by the Federal Convention. But they reached this definition as the conclusion to a discussion of the factious nature of mankind. Madison had already remarked that the causes of faction could not be removed without abolishing the liberty which is essential to political life. He believed, however, that the control of its effects was within human power. To the mind of the Virginian the vital political forces in the state should be tied up in a nice poise through the clauses of a written constitution. A government so contrived would, as Madison believed, "secure the permanent interests of the country against innovation."<sup>2</sup>

The ideal which Madison envisaged was one of dynamic equilibrium. He thought that by deriving the various branches of the government from different sources all positive action to the detriment of established order and guaranteed rights would be checked from the outset. Every safeguard against "the mutability of public councils" was to be embodied in the interior structure of the government itself. It was not enough that government should have a dependence upon the people; "experience has taught mankind the necessity of auxiliary precautions."<sup>3</sup>

The political experience to which Madison referred was fresh in the minds of all the men who assembled at Philadelphia in the summer of 1787. It was afforded by the thirteen states, in none of which did political practice square with the expressed provisions of its constitution. In every state the most earnest

<sup>1</sup> *The Federalist*, No. 51.

<sup>2</sup> W. S. Carpenter, *Democracy and Representation* (1925), p. 22.

<sup>3</sup> *The Federalist*, No. 51.

efforts to keep the several departments of government within their constitutional limits were defeated by the encroachments of the legislature upon the executive and the judiciary. The sonorous phrases of the Massachusetts constitution of 1780, outlining the doctrine of the separation of powers, stated the accepted constitutional theory from New Hampshire to Georgia. But the actual practice was so different that we find Madison declaring: "If we look into the constitutions of the several states we find, that notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. . . . It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper.<sup>4</sup> . . . . The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex. . . . The conclusion which I am warranted in drawing, is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands."<sup>5</sup>

When Madison told the Federal Convention that among the objects of the new government would be to provide "more effectually for the security of private rights and the steady dispensation of justice," he referred to the abuses resulting from legislative supremacy in the states.<sup>6</sup> Paper money legislation and stay laws had undermined the rights to liberty and property until they no longer existed, except at the will of the legislature. With legislative power not defined, except in formal terms, there could be no security of private rights against temporary majorities in pursuit of their selfish interests.

<sup>4</sup> *The Federalist*, No. 47.

<sup>5</sup> *Ibid.*, No. 48.

<sup>6</sup> M. Farrand, *Records of the Federal Convention* (1911), I, pp. 133-134.

Now, the first state constitutions contained in singular juxtaposition the doctrine of natural rights and the theory of legislative supremacy. The latter, however, was inserted because of the necessity of the political situation, and was not fundamental. Nearly all the revolutionary constitutions were framed by the legislative assemblies, which quite naturally wished to secure for themselves a large measure of authority. Moreover, legislative supremacy was expected to prove popular. The people had found cause to distrust the royal governors and the judges, while they regarded the colonial assemblies as the defenders of popular rights. The legislative power had carried the colonies through the difficult business of separation from Great Britain and had thereby won the approbation of the patriots. It therefore seemed a practical solution of existing difficulties to lodge extreme power in the hands of the legislature.

The doctrine of natural rights, on the contrary, was fundamental to the entire revolutionary propaganda. It was clearly enunciated in the Declaration of Rights issued in 1765 by the Stamp Act Congress and embodied the cardinal doctrine of the Revolution, that the colonists were entitled to the common law rights. The Declaration of Rights issued by the Continental Congress in 1774 was merely a clearer and more consistent statement of the earlier principles. It was from this declaration that the framers of the state constitutions took their model for the bills of rights. "These latter documents were little more than amplifications of this instrument of 1774, plus the doctrine of popular sovereignty."<sup>7</sup>

The defective character of the governmental machinery for the protection of private rights was due chiefly to the faulty knowledge of the revolutionary statesmen. Although the authors of the first state constitutions "understood perfectly the principles of liberty," yet most of them "were ignorant of the forms and

<sup>7</sup> W. C. Webster, "A Comparative Study of the State Constitutions of the American Revolution," *Annals of the American Academy of Political and Social Science*, IX, p. 385.

combinations of power in republics."<sup>8</sup> They turned readily to the doctrine of the separation of powers and the corollary system of checks and balances. Men like Jefferson, Mason, and John Adams were fully informed by reading the pages of Montesquieu of the importance of maintaining in government an equilibrium of power.<sup>9</sup> But they had nowhere to look for the application of the Frenchman's principles in the actual conduct of political affairs.

It is true that Montesquieu assumed the existence in England of a political system in which the separation of powers, supported by a set of checks and balances, occupied a central position. But the assumption proved to have little basis in fact. At the precise moment when Montesquieu was formulating his principles, the British government was assuming a form inconsistent with the doctrine of the separation of powers. Acquiescence in the appointment of members of the House of Commons to places of honor and trust by the crown had converted the political system of Great Britain into the mixed form of government despised by Hobbes.<sup>10</sup> An absolute separation between members of Parliament and places, declared one pamphleteer, is "an impossibility, owing to the nature of our government, which is mixed, and to that of mankind, who are not to be divested of their natural appetites and passions."<sup>11</sup>

The apparent free reign of human greed which is here envisaged is nothing less than the incipience of the party system. It is to the credit of Robert Walpole that he seized upon the idea of the utter depravity of man to establish it as a working principle of statesmanship. "Disliked by the Sovereign, as well as by the people," wrote an enemy of Walpole, "he erected an intermediate power for himself, by which he commanded both. He overawed the Nation with the power of the Crown, and he terrified the

<sup>8</sup> E. S. Corwin, "Progress of Constitutional Theory between the Declaration of Independence and the Meeting of the Philadelphia Convention," *American Historical Review*, XXX, p. 513.

<sup>9</sup> See the writings of Jefferson and Adams, and K. M. Rowland, *The Life of George Mason* (1892).

<sup>10</sup> *Leviathan*, Chap. 19.

<sup>11</sup> *Vindication of the Honour and Privileges of the Commons of Great Britain* (1740).

Prince with imaginary and well contrived fictions of disaffections in the subject. This method of government at once satisfied the ambition of the minister and glutted the avarice of his friends and dependants."<sup>12</sup> The foundations laid by Walpole were continued by the Pelhams until, by the time of Chatham, the structure of the party system was fully reared.

Party organization in the Walpole era was undoubtedly shaped through bribery and corruption. Ministerial combinations on the one hand thwarted the direction of members of the House of Commons by their constituents, and on the other hand broke down the barriers between legislative and executive power. But these innovations were regarded as political evils only by the Tory opposition.<sup>13</sup> From this source Walpole had little to fear, as long as he could attach to the Tories the stigma of foreign intrigue and dalliance with Jacobite plots.<sup>14</sup> He was therefore free to consolidate his control of the government through the maintenance of a party majority in the House of Commons.

Ministerial combinations, based upon parliamentary interest, were the foundations of the cabinet system. The work which Walpole began was put to the test in 1746 by the Pelhams. In that year the failure of George II to form a ministry which had not the support of a majority in Parliament marked the downfall of personal government by the king. "Ministers are the king in this country," exclaimed the monarch in his chagrin.<sup>15</sup> By this remark the Hanoverian showed his wisdom and his insight. For the changes to which he stood an unwilling spectator established the ministers who could command a majority in both houses of Parliament as the government of Great Britain. The rise of the

<sup>12</sup> *The Political Conduct of the Earl of Chatham* (1769). Chatham MSS, No. 82.

<sup>13</sup> *An Address to the Electors* (1739); *A Letter to a Member of Parliament from a Friend in the Country* (1739); *Directions and Advice for the Choice of Members of Parliament* (1741). See also *The Danger of Mercenary Parliaments* (1722); *A Complete History of the Late Septennial Parliament* (1722); and *Benefits Gained by the Late Septennial Parliament* (1722).

<sup>14</sup> *An Impartial Enquiry into the Reasonableness and Necessity of a Bill for Reducing and Limiting the Number of Places in the House of Commons* (1739).

<sup>15</sup> M. T. Blauvelt, *The Development of Cabinet Government in England* (1902), p. 177.



cabinet system thus created a new organ of control which gave stability and equilibrium to the British constitution upon a principle different from that of Montesquieu.

On this side of the Atlantic, however, the significance of the changes taking place at Westminster was not perceived. Men saw the corruption of Walpole but were blind to his administrative genius. They recognized that somehow the king himself had been superseded by the ministry as the actual agency of government.<sup>16</sup> But they still considered it the duty of the king to rule, and viewed the eclipse of royal power by ministerial groups as an aberration from the principles of the British constitution. "The people of America did not oppose the British king but the Parliament," said James Wilson; "the opposition was not against an unity but a corrupt multitude."<sup>17</sup> Across the black morass of English political corruption the principles of Montesquieu loomed to American statesmen all the more vividly. The doctrine of the separation of powers and the system of checks and balances were exalted as affording the only political devices adequate for the preservation of liberty.<sup>18</sup>

The writings of Montesquieu were accepted at Philadelphia as political gospel. But the principles they set forth were not unknown in American political experience. Indeed, the doctrine of the separation and balance of powers was proclaimed in Massachusetts before the *Esprit des Lois* saw the light.<sup>19</sup> In 1742 the house of representatives in Massachusetts rejected the demands of Governor Shirley for a permanent salary on the ground that it "would greatly tend to lessen the just weight of the other two branches of the government, which ought ever to be maintained and preserved; especially since the governor has so great authority and check upon them." This was no chance remark of the

<sup>16</sup> H. J. Ford, *Rise and Growth of American Politics* (1898), p. 176.

<sup>17</sup> Farrand, *op. cit.*, I, p. 71.

<sup>18</sup> *The Federalist*, No. 47.

<sup>19</sup> The doctrine of the separation of powers was expounded by at least one eighteenth-century writer before Montesquieu, i.e., P. de Rapin-Thoyras, in his *The History of England* (1732-3). This book was known in the American colonies and was quoted by a number of the revolutionary pamphleteers. See Richard Bland, *Enquiry into the Rights of the British Colonies* (1769).

deputies, for they had in view as their model the British constitution, "the strength and beauty of which chiefly consists in that mutual check which each branch of the legislature has upon the other." A similar balance of power they thought ought to be maintained in the government of Massachusetts. "There ought not to be an independency in either branch of the legislature," they concluded, "forasmuch as to be independent and arbitrary are the same things in civil policy."<sup>20</sup>

Although lacking in scientific precision, the political dynamics of colonial Massachusetts aimed to balance prerogative and popular rights. Practical difficulties arose because the governor and the deputies had their powers defined by different instruments. The governor was bound by his instructions, while the deputies looked to the charter of 1691 for the scope and limits of their authority. On the salary question the governor could only reiterate the instructions received from the crown; he could not coerce the popular assembly.<sup>21</sup> But when the deputies undertook to secure for themselves timber from lands reserved to the crown, adjourned their sessions for several days without the consent of the governor, and sought to suspend a military officer in the service of the king, their conduct was properly restrained as an encroachment upon the prerogative.<sup>22</sup>

The political ideal of a balance of power among the different branches of the government was menaced by the selfish interests of the popular delegates. The same spirit of faction against which the statesmen of 1787 sought to find safeguards appeared in the colonial government.<sup>23</sup> Opinion in the house of representatives was created, according to Governor Shute, "by the artifice of a few designing members, together with the insinuations of the people of the town of Boston." It was the object of these demagogues to make the country members "believe that the

<sup>20</sup> *C.O. 5 No. 753.*

<sup>21</sup> *Collection of the Proceedings of the Great and General Court . . . (1729)*, pp. 13-112; G. A. Wood, *William Shirley* (1920), pp. 110-114.

<sup>22</sup> *C.O. 5 No. 752; C.O. 324 No. 35; British Museum Add. MSS. 35, 908.*

<sup>23</sup> The discontent was not confined to Massachusetts, but spread to other colonies as far south as the Carolinas. See the complaints of the governors in E. B. Greene, *The Provincial Governor* (1898), pp. 178-179.

House is barely supporting the privileges of the people, whilst they are invading the undoubted prerogative of the Crown." Among the people he noted "a levelling spirit too apt to be mutinous and disorderly."<sup>24</sup> Nor was the situation different in 1728 when the people of Boston in town meeting debated the question of fixing a permanent salary. Upon this occasion, Governor Burnet determined to overcome the undue influence of the Bostonians by removing the legislature to Salem.<sup>25</sup>

It was Benjamin Franklin who first clearly discerned the nature of the evil which threatened local self-government in America. "Faction," he remarked in 1736, "if not timely suppressed, may overturn the balance, the palladium of liberty, and crush us under its ruins." He recalled the "common proverb, that the voice of God is the voice of the people." But this, he observed, is true only while the people "remain in their proper sphere, unbiased by faction, undeluded by the tricks of designing men."<sup>26</sup> The wisdom of Franklin was amply justified by the political events of his own day.

For the representatives of the people were shrewdly endeavoring to augment their power. In 1742 the Massachusetts legislature passed bills for dividing three existing towns, thereby creating three new ones. It did not escape the attention of Governor Shirley, as he vetoed the measures, that an increase in the number of deputies in the General Court would change the balance of power among the different branches of the provincial government. The superiority of the deputies to the council in point of numbers, in his judgment, already gave the popular assembly an advantage in the government. The governor admitted that it was never the practice of the towns to send to the legislature the full representation to which they were entitled. "But still they have it in their power," he said, "upon an extraordinary emergency to double and almost treble their numbers, which they would not

<sup>24</sup> Memorial of Governor Samuel Shute to the King (1723). Reprinted in W. S. Perry, *Historical Collections Relating to the American Colonial Church* (1876), III, pp. 121-126.

<sup>25</sup> *Collection of Proceedings*, etc., p. 90.

<sup>26</sup> B. Franklin, *Works* (ed. Bigelow), I, p. 428.

fail to do, if they should be desirous of disputing any point with his Majesty's Governor, which they might suspect their ordinary members would not carry against his influence in the House."<sup>27</sup>

The charter of 1691 established the General Court, consisting of the governor, council, and deputies, as the legislature in Massachusetts. It recognized the existence of specific powers in the hands of the governor, many of which could be modified or enlarged by instructions from the crown, and gave him a negative upon the acts of the other branches of the legislature. But the charter nowhere recited the powers conferred upon the house of representatives. They were prohibited from enacting any laws repugnant to the laws of England, and were directed, with the advice and consent of the council, to impose rates and taxes for the necessary defense and support of the provincial government.<sup>28</sup> Unless checked by the governor or council, or by the disallowance of an act by the Privy Council, the deputies had no means of ascertaining the scope and limits of their authority.

It is not surprising that the colonists came to regard the legislative as an undefined power. Especially within the field of taxation, the view prevailed that the deputies of the people were the final judges of their own authority. "May not the House of Representatives," asked the Massachusetts deputies, "who act for, and may be said to be the people, and pay the money, have the disposition of some part of it?"<sup>29</sup> Of course, it may be argued that the deputies were ignoring the constitutional position of the different branches of the legislature.<sup>30</sup> But this was an error which under the circumstances might be expected. They had no clauses in their charter whereby to define their powers, and they could not, in the salary question, leave final judgment in the hands of the governor. To do that would be to make him the judge in his own case. The want of an organ of control in

<sup>27</sup> *Acts and Resolves of the Province of Massachusetts Bay*, III, p. 69.

<sup>28</sup> The charter of 1691 is reprinted in W. MacDonald, *Select Charters* (1899), pp. 205-212.

<sup>29</sup> *Collection of Proceedings, etc.*, p. 104.

<sup>30</sup> J. T. Adams, *Revolutionary New England* (1923), p. 135.

the government responsible to the people thus resulted in a deadlock.

The importance of the dispute over fixing a permanent salary for the governor in Massachusetts can hardly be overestimated. It not only revealed the enormous possibilities for resistance in the undefined powers of the popular assemblies but also convinced thoughtful men of the necessity of establishing an agency of control in the government. When the confusion incidental to the activities of the war for independence had cleared, the evils of the earlier situation were not corrected, but obscured, in the governments of the thirteen commonwealths. Executive tyranny was no longer feared, because the governors in the states had been subordinated to the legislatures. But from New England to Georgia, legislative power was undefined.<sup>31</sup> Private rights were therefore open to invasion whenever popular majorities in pursuit of their selfish interests chose to exert their power through the state legislatures. The extent to which this was done without restraint induced the meeting of the Federal Convention.

The men assembled at Philadelphia received little help from English experience in formulating safeguards against legislative tyranny. No political system was quoted as frequently in the debates as the British constitution. It was, in the opinion of Alexander Hamilton, the best in the world.<sup>32</sup> But his colleagues were disposed to agree with John Lansing that "the point of representation could receive no elucidation from the case of England."<sup>33</sup> The reason is not difficult of access. Throughout the debates there is a constant stream of criticism of the representative system in England. The speeches of Wilson, Franklin, and Mason reflect the prevailing belief that popular privileges in England had vanished in an orgy of political corruption.<sup>34</sup> Their arguments might form a brief in behalf of parliamentary reform, but for the Philadelphia convention they had only negative value.

<sup>31</sup> Corwin, *The Doctrine of Judicial Review* (1914), p. 35.

<sup>32</sup> Farrand, I, p. 288.

<sup>33</sup> *Ibid.*, p. 337.

<sup>34</sup> *Ibid.*, pp. 82, 99, 254, 376, 381, 450.

Hamilton discerned clearly enough the true course of English political development in the eighteenth century. He pointed out that "Hume had pronounced all that influence on the side of the Crown, which went under the name of corruption, an essential part of the weight which maintained the equilibrium of the constitution."<sup>35</sup> The same thought had already been expressed by John Dickinson, who inquired what was to replace in our government the attachments which the Crown draws to itself and thereby stabilizes the British political system.<sup>36</sup> Hamilton answered, interest. "The government," he said, "must be so constituted as to offer strong motives. In short, to interest all the *passions* of individuals. And turn them into that channel."<sup>37</sup>

Other members of the convention compensated for their ignorance of the British constitution by displaying their knowledge of human nature. "Loaves and fishes must bribe the demagogues," declaimed Gouverneur Morris. "Vices as they exist must be turned against each other; one interest must be opposed to another interest."<sup>38</sup> The problem of government he regarded as one of invention, whereby distinct interests were to be given mutual checks in order to obtain mutual security. By this means alone could they reward Edmund Randolph's search for "such a check as to keep up the balance, and to restrain, if possible, the fury of democracy."<sup>39</sup> In other words, conflicting interests in the state were to be recognized and introduced directly into the public councils.<sup>40</sup>

English experience was consulted to the extent of providing for the exclusion of members of the judiciary, together with the executive, in a council to revise acts of the national legislature. Many members argued vigorously for the council of revision, but it was rejected upon the ground that it was inconsistent with

<sup>35</sup> Farrand, I., p. 376.

<sup>36</sup> *Ibid.*, p. 86.

<sup>37</sup> *Ibid.*, p. 311.

<sup>38</sup> *Ibid.*, pp. 512-513.

<sup>39</sup> *Ibid.*, p. 58.

<sup>40</sup> Carpenter, *op. cit.*, pp. 76 ff.

the proper separation of powers.<sup>41</sup> Likewise the proposal to associate with the executive a council composed of members from both houses of the legislature was voted down. This action admittedly increased the executive power, but there was no alternative if the convention remained true to the fundamental principle of its scheme of government.<sup>42</sup>

The Constitution was the practical embodiment of the doctrine of the separation of powers and the system of checks and balances. But the Federal Convention adjourned without knowing how the partition of power among the several departments was to be maintained. When the authors of *The Federalist* first confronted this question, they thought the only answer was "that the defect must be supplied by so contriving the interior structure of the government as that the several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."<sup>43</sup> In other words, they thought of the system as one in which personal interests and motives remained fixed in equilibrium. "Ambition must be made to counteract ambition," they said. "The interest of the man must be connected with the constitutional rights of the place." No department of the government was yet regarded as possessing authority sufficient to draw the line of demarcation between the powers of coördinate departments.

A few weeks later Hamilton gave the final answer when he pointed to the judiciary as the department which was to maintain the Constitution against every encroachment. "A constitution is, in fact, and must be regarded by the judges, as a fundamental law," he said.<sup>44</sup> The Constitution of the United States ought, therefore, "to be the standard of construction for the laws, and

<sup>41</sup> Corwin, *The Doctrine of Judicial Review*, pp. 41-42. The debates will be found in Farrand, *op. cit.*, II, pp. 73-80.

<sup>42</sup> *Ibid.*, pp. 284-285, 329.

<sup>43</sup> *The Federalist*, No. 51. See the debate in the House of Representatives on June 16, 1789, on the establishment of a department of foreign affairs. On this occasion Madison advanced the theory of departmental construction of the Constitution, which was denied by Gerry and others. *Annals of the First Congress*, I, pp. 479 ff.

<sup>44</sup> *The Federalist*, No. 78.

wherever there is an evident opposition, the laws ought to give place to the Constitution." This doctrine, it is true, is not embodied in specific clauses of the document, but is deducible "from the general theory of a limited Constitution."<sup>45</sup> The claim that the legislative body are themselves the final judges of their own powers, Hamilton objected, assumes that the Constitution intended to enable the representatives of the people to substitute their will for that of their constituents. "It is far more rational," he said, "to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority."<sup>46</sup> With the growth of judicial review, the task of maintaining the separation and balance of powers established in the Constitution devolved upon the courts.

<sup>45</sup> *The Federalist*, No. 81

<sup>46</sup> *Ibid.*, No. 78.



## A DECADE OF SINO-RUSSIAN DIPLOMACY

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The diplomatic relations between China and Russia in the past decade present a tangle of converging factors among which the Chinese revolution, the World War, and the Russian revolution play a great part. They are, however, only a phase in the larger process of imperial dissolution and national revival which has encompassed both the Russian and Chinese states and remarkably transformed them within the space of a generation. It is in relation to the forces unleashed by the disintegration of the Romanov and Manchu empires that the decade's changes in diplomatic policy must be viewed.

### I

The most significant factor underlying the reorientation of Russian and Chinese foreign policy was the abolition of the monarchy in each country; for, with the fall of the imperial houses, came the beginnings of political and administrative disintegration, the resurgence of local nationalism, and the loosening of the centrifugal forces which the defunct dynasties had held in check. It is not our problem here to trace the constitutional consequences of such a vacancy of power in either domain, but to note the salient fact that it was a difficult, if not impossible, task immediately to create an efficient substitute authority for the dead and departed emperors, and that, in view of that difficulty, provincial separatism was for a time allowed to gain such headway as to constitute a serious menace to the national integrity of both the dissolving empires. The weakening of the internal machinery of the state in each instance, due to the lapse of such moral authority and centralization as attached to the imperial office, operated to accentuate the desire for administrative separation of the outlying dependencies, and consequently to give rise to intricate international complications.

The second factor conditioning the relations between the two countries has been the resurgence of national feeling, not merely

among the Chinese and the Russian peoples, properly speaking, but among the submerged nationalities of each empire. This national resurgence was due in part to the incursion of the industrial revolution to new areas, in part to a hatred of "foreign" oppressors, and last but by no means least, to the appealing ideology of either a democratic or a proletarian revolution. The Chinese revolution, of 1911, spreading the democratic doctrine borrowed by Chinese intellectuals from their contacts with the Occident, and the Russian revolution of 1917, which was destined to diffuse throughout the Orient the gospel of communism as the sole means of national salvation from imperialistic doom, have contributed materially to the building up of that confused complex of new ideas and ancient traditions forming the mass opinion of the peoples of both the former empires.

The leaders of the Chinese revolution, attributing China's international servitudes to the progressive capitulation of the Manchus to the demands of foreign powers, sought, through the adoption of political republicanism and a democratically conceived foreign policy, to liberate their country from the strictures imposed upon her by the Occident. They deemed it impossible that a government based upon popular sovereignty should continue the abject humiliations to which the later Manchus had subjected the empire. The revolution, therefore, in the minds of its leaders, connoted a break with the policy of increasing submission and subjection, and the inauguration, diplomatically, of an era of recovery of national rights. But it signified also the passing of the first blind impulses of indiscriminate xenophobia—such as was evidenced in the Boxer uprising—and the beginning of a new endeavor to win back, by negotiation, and by producing a division in the ranks of the Great Powers, the rights abandoned by the old régime. Up to the period of the World War, however, the Chinese republic encountered a solid phalanx of diplomatic adversaries, who presented a united front and rejected virtually all the overtures looking to a conventional abandonment of their acquired rights.

Not the least insistent of China's adversaries was imperial Russia. The Czar's government sought to profit from the dis-

sensions and internal weaknesses of the first years of the Chinese revolution and to encroach still further on the new-fledged republic, not so much through obtaining new concessions as through facilitating the severance from China of outlying portions of the former imperial territory and their assimilation into the Romanov empire. A great country which had unwillingly retreated from Manchuria and reluctantly abandoned Korea to Japanese domination, and which was then making new demands upon defenceless Persia, could hardly be expected to look with other than covetous eyes upon Mongolia and Turkestan. It is not surprising, therefore, that when Mongolia, following the overthrow of the Manchus, proclaimed her independence,<sup>1</sup> Russia stepped in to assure the region a definite legal status and enhance her own rights.<sup>2</sup> It was not, however, until the World War was in progress that Russia, by a tripartite agreement, consolidated her official protectoral position.<sup>3</sup> Autonomous Outer Mongolia thereby became a recognized, but not fully independent, state—a vassal of China under the virtual protectorate of Russia. Here were evidences of the disintegration of China comparable to that of the Ottoman Empire as indicated by the treaties of Adrianople, Paris, and Berlin. The Kiakhta agreement was in fact intended to give the Romanovs a strategic position, buttressed by additional railway and telegraph agreements,<sup>4</sup> looking to the eventual incorporation of Mongolia—all this at the very

<sup>1</sup> December 1, 1911. Cf. *China Year Book* (1914), p. 621.

<sup>2</sup> Cf. the treaty of Urga, November 3, 1912 (*Izvestia*, 1913, Vol. II, p. 16, and J. V. A. MacMurray, *Treaties and Agreements With or Concerning China, 1894-1919*, Vol. II, pp. 992 ff.), whereby Russia pledged her assistance in the maintenance of Mongolian autonomy while obtaining the extension and confirmation of her rights under the new régime; also the Sino-Russian Declaration of Peking, November 5, 1913 (*Russian Bulletin of the Laws*, No. 270, Sec. 1., December 6/19, 1913, and MacMurray, *op. cit.*, Vol. II, pp. 1066-1067) reaffirming Mongolian autonomy, recognizing China's nominal suzerainty over Mongolia, and pledging the signatories to abstain from colonizing. This agreement fell slightly short of a formal protectorate, Russia merely pledging her good offices in the regulation of Sino-Mongol relations.

<sup>3</sup> Treaty of Kiakhta, June 7, 1915 (*Izvestia*, 1915, Vol. V, p. 6; MacMurray, *op. cit.*, Vol. II, pp. 1239 ff.) *Inter alia*, Mongolia was not permitted to conclude any international treaties on political and territorial questions.

<sup>4</sup> Agreements of Kiakhta, September 30, 1914 (*Izvestia*, 1915, Vol. I, p. 3; Mac-

time when Japan was pressing upon China the famous twenty-one demands which would have brought Manchuria more effectively under the Mikado's control.

The foregoing evidence with regard to Mongolia will suffice to demonstrate how, up to the very end, the Russian autocracy remained predatory, aggressive, imperialistic, and sought, even during the World War, to hasten the dismemberment of China, hoping to garner territorial spoils. At the same time it sanctioned, through secret negotiations, the aggressive policies of Japan.<sup>5</sup>

With the coming of the Russian revolution, the situation was destined to change, although no appreciable deviation from imperial policy was noticeable under the short-lived Russian provisional government, which, despite its democratic character, held fast, in its dealings with the Orient, to the cardinal principles of foreign policy laid down by the Czarist régime. The single momentous fact in Sino-Russian relationships during the existence of the provisional government was China's entry into the World War, to become for a brief period a co-belligerent with republican Russia against the Central Powers. Under the influence of the United States, and in the hope of gaining the good-will of the Allied and Associated Powers, China pledged herself to military and maritime coöperation against Germany and Austria. Then, with the advent of the Bolsheviks to power and the inauguration of peace negotiations between Russia and the Central Powers at Brest-Litovsk, China set out on a course of action which was destined to bring her, in the wake of the Allies, into definite hostilities with Soviet Russia.

## II

The ensuing three years, until the middle of 1920, constituted a period of non-intercourse. The estrangement continued, due

Murray, *op. cit.*, Vol. II, pp. 1178-1179), and the treaty of Urga, January 24, 1916 (*Bulletin of the Laws*, No. 122, Sec. 1, May 10/23, 1916; MacMurray, *op. cit.*, Vol. II, pp. 1259 ff.).

<sup>5</sup> Cf. the convention of Petrograd, July 3, 1916, and the secret treaty of the same date (*Bulletin of the Laws*, No. 190, Sec. 1, July 12/25, 1916, and MacMurray, *op. cit.*, Vol. II, pp. 1327-1328). Further details as to the negotiations are given in the *Russkoe Slovo*, April 1/14, 1916 (Cf. *Bulletin Périodique de la Presse Russe*, No. 7, May 12, 1916).

to the implicit faith of China in the promises and programs of the Allied governments, with whose fortunes she had associated hers in the critical days of the war. With their aid, it is true, she extinguished the legal servitudes of extraterritoriality which Germany<sup>6</sup> and Austria<sup>7</sup> had imposed upon her, and although she suffered disillusionment at Versailles, and despairingly saw German "rights" in Shantung transferred to Japan, she had hitched her wagon to the Allied constellation and saw little to gain from linking her fortunes to the new Red star of Moscow. For that reason, during the early years of the founding and consolidation of the soviet régime in Russia, China remained immune to the repeated proffers of friendship made by the communist commissars. Casting her lot with the anti-Bolshevik elements supported by the Allied Powers, she coöperated in their blockade of the areas controlled by the Bolsheviks, lent her support to the military expeditions in Siberia which still aimed at a restoration of the old régime, and reached an agreement with the "Whites" for the control of the Chinese Eastern Railway.<sup>8</sup>

For all this China need not be censured too severely; if the windows of wisdom were darkened in London, Paris, Rome, and Tokio, and the major Allies still thought it possible to control communism by the policy of the *cordon sanitaire*, it would be almost too much to expect greater wisdom in the Waichiaopu in Peking. From a legal standpoint, China was still a belligerent. She could not, without grave danger, dissociate herself from the policies which the Allied governments were supporting alike in Europe and Asia. She had acceded in principle to the abrogation of the shameful treaties of Brest-Litovsk at the time of the armistice, and had consistently, until the beginning of 1920, maintained her studied disapproval of Bolshevik tactics.

<sup>6</sup> Cf. treaty of Versailles, Articles 128-134.

<sup>7</sup> Cf. treaty of Saint Germain, Articles 113-117.

<sup>8</sup> The arrangement was effected at Peking on April 27, 1918, between the Chinese authorities and the shareholders of the Russo-Asiatic Bank, who laid claim to ownership of the railway. Cf. *North China Herald*, Vol. 127, p. 253, and "The Chinese Eastern Railway," *Foreign Policy Association Information Service*, Vol. II, p. 5 (February 27, 1926).

Viewed from Moscow, China's attitude was easily explainable: to the directors of the soviet foreign office, China appeared bound, like Hector, to the chariot of Allied policy and destined to be dragged in the dust around the outer bastions of capitalist imperialism. Hence the *motif* of Bolshevik policy was to awaken China, by systematic manifestoes, to the perils of her own condition, and to proclaim to her on every appropriate occasion that only by allying her fortunes with those of revolutionary Russia could she hope for liberation from her bondage. But although the soviet government made an initial effort to open diplomatic contacts with China in the course of the winter of 1917-1918, it was foredoomed to failure,<sup>9</sup> and save for a formal offer of July 26, 1919, to restore friendly relations<sup>10</sup>—a move in the wake of China's disappointment at Versailles—no further attempts were made at direct negotiation until 1920. In the interval, China was given a free hand in Mongolia, which she endeavored to bring back under her effective control.<sup>11</sup>

The year 1920 witnessed a series of important changes. The recovery of Russian Turkestan and Siberia by the Red armies brought China and Soviet Russia face to face in mid-Asia. Further east, the Far Eastern Republic was established as a buffer

<sup>9</sup> Cf. "Les efforts et les succès de la Russie des Soviets en Chine," *L'Europe Nouvelle*, Vol. VIII, p. 948 (July 18, 1925).

<sup>10</sup> Cf. *Golos Rosii*, September 16, 1919, cited by A. L. P. Dennis in *The Foreign Policies of Soviet Russia*, p. 335; cf. also *Izvestia*, September 16, 1922, for the memorandum from Joffe to Wellington Koo, reiterating the program of 1919. A paraphrase is given in the *London Times*, January 15, 1920, p. 14, c. 1.

<sup>11</sup> Following the Russian revolution, the Chinese government took steps to reassert its authority over Outer Mongolia, using as a pretext the pan-Mongolian activities of Ataman Semenov. In the autumn of 1919 China despatched an expeditionary force to Urga under General Hsu Shu-tseng—despite the provisions of the Urga and Kiakhtha conventions—and coerced the Mongol khans into acceptance of the cancellation of their autonomy (November 16, 1919). General Hsu's brutal régime of pacification, which encountered much local opposition, was, however, short-lived. After a few months of Sino-Mongol civil government in 1920, the Chinese authorities were expelled from Urga by the bands of "White" Russians, Buriats, and Mongols, led by Baron Ungern von Sternburg, on February 3, 1921. Cf. *Bulletin Périodique de la Presse Chinoise*, No. 14, pp. 4-5 (July 14, 1919); *Bulletin Périodique de la Presse Russe*, No. 95, pp. 4-6 (October 19, 1921); and the *North China Herald*, Vol. 137, pp. 300, 518, 586.

between Russia and Japan. Once formal contact between the two governments had of necessity been established at the frontiers, the victorious soviet government proffered a series of concrete terms as the bases of peace.

On March 28, 1920, Leo Karakhan, then assistant commissar for foreign affairs, set forth, in an appeal to the Chinese people, the soviet conception of the bases of proper understanding and good faith between the two peoples. He promised that Russia would renounce the unjust treaties "obtained" by Czarist diplomacy, return without compensation the Chinese Eastern Railway as well as all the concessions previously given to Russian subjects, and negotiate a treaty of friendship to serve as a basis for future amicable relations. This triple program of renunciation, restoration, and reconciliation was simple and appealing, and although the Peking government did not openly accede to it for the time being, it presently became obvious that the policy of abstention from all contact with the Bolsheviki had collapsed and that a realistic policy more in conformity with the existing circumstances must be adopted.

Accordingly, the Chinese government ordered its provincial functionaries in Sin-Kiang to enter into a commercial agreement with Soviet Turkestan.<sup>12</sup> Simultaneously, the Chinese foreign office informed Prince Kudatchev, the Russian minister to China under the old régime, that he and his diplomatic personnel, as well as the consular representatives of Czarist Russia, had no longer a *raison d'être*, and that their continued presence in China might prove menacing to the existence of the republic.<sup>13</sup> In the face of this demand, the Russian minister could only accede. Forthwith the Chinese government seized the concessions and immovable consular property of Russia throughout the republic,

<sup>12</sup> The negotiations for the renewal of trade relations were consummated in July and August, 1920, receiving the approval of Peking on September 21, 1920. For the texts of these agreements cf. the *North China Herald*, Vol. 136, p. 806 (September 25, 1920).

<sup>13</sup> Cf. *London Times*, September 27, 1920, p. 9, c. 4, and the *North China Herald*, Vol. 137, pp. 10-11 (October 2, 1920).

while the legation property in Peking was intrusted to the diplomatic corps.

Thus, by the end of 1920, through military successes, the soviets had forced China to abandon the policy of abstention and hostility into which she had been dragged by Allied tactics, and to start a period of protracted negotiations.\* These covered the ensuing two and one-half years and ended with the final *de jure* recognition of the soviet government in May, 1924.

### III

The negotiations inaugurated were dual: the Chinese government authorized the reception at Peking of a special and semi-official mission from the Far Eastern Republic, headed by Yurin, who came, however, as the spokesman for Moscow as well as for Chita.<sup>14</sup> Simultaneously, the Peking government sent Chang Si-lin at the head of a military and trade mission to Moscow, with instructions to sound out the Commissariat of Foreign Affairs as to the bases on which it now purposed to conclude a political settlement.<sup>15</sup> The immediate object of both missions was to effect a working economic agreement which would permit the resumption of trade; each had ulterior objectives which were not without significance.

Chang Si-lin, while in Moscow, obtained from Karakhan a letter dated September 27, 1920, outlining the point of view of the soviet government at that time and purporting to disclose the instructions which had been given to Yurin, the negotiator of the Far Eastern Republic, on behalf of Russia. These instructions embraced seven important points in Sino-Russian relationships. First, Russia proposed to abandon her previous treaties with China and to return to China all rights, privileges, and concessions previously granted to Russian nationals. This, it will be seen, is a reiteration of the major part of the program of

<sup>14</sup> Cf. *London Times*, September 23, 1920, p. 7, c. 4.

<sup>15</sup> Cf. the *Bulletin Périodique de la Presse Russe*, No. 92 (April 29, 1921), and the *Krasnaya Gazeta*, October 3, 1920. The mission is said to have been authorized originally to take up matters officially, but, following the overthrow of the Anfu party in Peking, was disavowed and became unofficial. *London Times*, October 23, 1920, p. 7, c. 5. Cf. also *Soviet Russia*, Vol. IV, p. 542 (November 27, 1920).



renunciation and restoration laid down the previous March. Second, Russia sought an agreement pledging China not to give any aid to the enemies of the soviets, and to repress their activity on her territory. This point was made the more imperative on account of the escape into Chinese territory of the various roving bands of anti-Bolshevik chieftains following the defeat of Koltchak and Wrangel. The stipulation was immediately directed against such groups as those of Baron Ungern von Sternburg, mention of whom has already been made in connection with Mongolia. Third, Russia indicated that she would consent to "the assimilation of Russians to Chinese from the point of view of jurisdiction"—a euphemism for the abandonment of Russian extraterritorial rights in China. Fourth, Russia looked to the conclusion of a commercial convention on the basis of the most-favored-nation—an interesting reminder that the soviet government had by this time begun to bethink itself of the special legal privileges conceded by China to others, and of garnering such for itself. The fifth and sixth points involved the handing over to Russia of consular and diplomatic property and the abandonment by Russia of claims to the remainder of the Boxer indemnity. Lastly, Russia proposed the conclusion of a special convention relative to the Chinese Eastern Railway, in regard to which the Far Eastern Republic should be represented and consulted.<sup>16</sup>

All told, the revised program which Karakhan enunciated and which Chang Si-lin brought back to Peking from Moscow was much less liberal than the program to which Russia had subscribed a few months earlier. But Chang was merely an intermediary for diplomacy, not a negotiator; his duty was simply to inform the Waichiaopu of what the Moscow commissars desired; negotiations were to be intrusted to other hands.

<sup>16</sup> It will be noted that when, in March, 1920, the soviet government had proposed the complete retrocession of the Chinese Eastern Railway to China, it was not fully master of the Transbaikalian region connecting with the railway; by fall the Far Eastern Republic was in a position to demand participation in the railway's operation, and Moscow could insist on rights for its vassal which it would have refused for itself but a few months before.

The endeavor of the delegation from the Far Eastern Republic was to translate Karakhan's proposals into action. Yurin announced in a note of November 30, 1920, to the Chinese Foreign Office that "the mission of the Far Eastern Republic believes it necessary to raise first of all the question of a radical revision of all the treaties and agreements entered into between China and Czarist Russia." It will be noted that "renunciation" of treaties had already been tempered and changed to "radical revision." In the ensuing negotiations, Yurin's tactics were hardly adroit; he gave reiterated evidences of friendship, but alternated these with violent protests against the Chinese provincial officials in Turkestan and Mongolia. Six months of this produced no results, and he returned to Chita in April, 1921, to take over the foreign office of the Far Eastern Republic. When he returned to Peking in July, he was received with politeness but was told to negotiate first with Marshal Chang Tso-lin at Mukden.<sup>17</sup>

At the root of this attitude on the part of the Waichiaopu was the fact that the Washington Conference was now in the offing, and, Mr. Hughes' attitude toward the soviet government being understood at Peking as clearly as at the American capital, the Chinese government could not afford to parley with the representatives of Moscow if it wished to stand in good favor at Washington. Yurin's mission, therefore, was a failure, and the Washington Conference had to come and go before any further overtures toward a rapprochement between Peking and Moscow could be made.<sup>18</sup> The wisdom of abstaining from even the appearance of negotiation with Moscow was evidenced during the conference by the kindly attitude manifested by the United States toward China. When the conference was over, the interrupted negotiations could be resumed with impunity.

In the meantime, the initiative in diplomatic conversations passed from Peking to Canton,<sup>19</sup> the seat of the south China

<sup>17</sup> On the various aspects of Yurin's mission, cf. *North China Herald*, Vol. 138, p. 191; Vol. 139, pp. 84, 442, 652; and Vol. 140, pp. 312, 386.

<sup>18</sup> In the interim Paikes, a rather complacent functionary, was left in Peking to conduct minor negotiations.

<sup>19</sup> It had been reported in April, 1921, that Moscow had sent a "feeler" to the

government. During the Washington Conference Dr. Sun Yat-sen sent a secret emissary, Chu Wu-chong, to Berlin, to Herr Von Hintze, formerly German minister to China and known to be friendly to the soviet government.<sup>20</sup> It would appear that Dr. Sun sought an alternative to the "policy of negotiation" being tried at Washington by effecting a political combination of Germany, Russia, and China to redress the balance of power in the Orient. The proposals involved seem to have contemplated a "triple alliance" of the three countries to force the "imperialist" powers to abandon their treaty rights. The idea of such a diplomatic combination appears to have been welcomed at Berlin, as plans were laid for Von Hintze to go to the Far East.<sup>21</sup> Upon the overthrow of Dr. Sun in the middle of 1922, however, the mission was abandoned.

By May, 1922, Moscow believed the occasion propitious for reopening negotiations. The attempt to negotiate through the emissary of a puppet republic had proved futile; to counterbalance the efforts made on behalf of China by the so-called "imperialist" powers at Washington, the soviet government itself must act with more adroitness and greater authority than Yurin. Hence, following the reception of another Chinese mission at Moscow,<sup>22</sup> Chicherin selected Adolph Joffe—one of the most skilled soviet diplomats, the negotiator of Russia's principal settlements with her western neighbors, and the man who had made the Russo-German alliance of Rapallo possible—to head an imposing mission to Peking. It went with an abundance of funds at its disposal.

Although the Far Eastern Republic had already intrusted its foreign affairs to the Russian Soviet Republic at Genoa and

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Canton government, suggesting (1) mutual recognition, (2) resumption of commercial intercourse, (3) the spreading of bolshevism by the Cantonese, and (4) financial assistance to Canton by Moscow. Cf. the *North China Herald*, Vol. 139, p. 11 (April 4, 1921).

<sup>20</sup> *Ibid.*, Vol. 145, pp. 3, 9 (October 7, 1922), for the correspondence involved and Dr. Sun's commentaries.

<sup>21</sup> The possible connection of this project with the Russo-German alliance consummated at Rapallo is not without interest.

<sup>22</sup> Cf. *Izvestia*, May 21, 1922, and *Bulletin Périodique de la Presse Russe*, No. 105 (July 8, 1922).

elsewhere, it was deemed best, for the sake of appearances, to associate with Joffe a separate envoy from Chita, Pogodin, who became merely an interested onlooker in the negotiations between Joffe and Wellington Koo. Reviewing Moscow's previous endeavors to come to an understanding with China, and declaring that Russia was "still animated by the same sentiments of exceptional sympathy and friendship for the Chinese people," Joffe proposed once more the opening of negotiations on all questions concerning the two countries. Koo, however, felt that this ostensible generosity was not the equivalent of the pledges of Karakhan's previous programs; hence, in accepting the proposal, he explicitly insisted that Joffe bear in mind these pledges, which he affected to regard as renewed.<sup>23</sup> Here was an initial evidence of variant interpretation which widened as the negotiations proceeded, and Joffe, becoming a strict constructionist, sent note after note to the Waichiaopu relating to the Boxer indemnity, the Chinese Eastern Railway, and allied topics.<sup>24</sup> Failing to secure prompt recognition from Koo and the feeble President Li, Joffe left for the Chang-chun conference with Japan, only to find, on his return, differences of principle between himself and Koo so great that no amount of parleying could reach common ground.

It would appear that Joffe, by following a policy of bluffing, granting indiscriminate interviews, flooding the press with communiqués, and threatening military interventions—the same policy that had discredited Yurin—showed himself unfit as a negotiator. At last, recognizing his failure to extort concessions or come to terms with the Peking government,<sup>25</sup> he left for Shanghai to negotiate with the Cantonese, and came to an agree-

<sup>23</sup> Cf. *Bulletin Périodique de la Presse Russe*, No. 111 (October 18, 1922); *Izvestia*, September 16, 1922; and *London Times*, September 21, 1922, p. 11, c. 5.

<sup>24</sup> One of Joffe's projects was to tie up Russian Turkestan to Eastern Siberia by a vast system of railway construction reaching from Ferghana to Vladivostok via the Hoang-Ho valley and the Peking-Kalgan railway. This was variously received at Peking, according to rival accounts, and seemed to Koo to savor of the railway imperialism of Czarist days. Cf. *L'Europe Nouvelle*, *loc. cit.*, at p. 950; *Izvestia*, August 22, 1922; and *Bulletin Périodique de la Presse Russe*, No. 109 (October 4, 1922).

<sup>25</sup> Cf. *North China Herald*, Vol. 146, p. 208 (January 27, 1923).

ment with the nationalist party and Dr. Sun on the principle underlying their respective actions in matters of foreign policy.

In a press *communiqué* of January 27, 1923,<sup>26</sup> Joffe and Sun agreed that the establishment of communism in China was and would be impossible until China had recovered her national unity. This admission, so damaging to Russia, was coupled with the assurance of the warmest sympathies of Russia for China: Second, Joffe reiterated to Sun that the principles of Karakhan's declarations were still proffered in good faith by the soviet government. Third, as to the Chinese Eastern Railway, the two agreed to the idea that Chang Tso-lin should participate in a special convention, but decided that an immediate agreement was necessary as a *modus vivendi* to safeguard the "true rights" and special interests of both parties. Finally, Joffe disclaimed any soviet designs on Mongolia, but held that the presence of soviet troops there<sup>27</sup> was necessary to prevent disorder.<sup>28</sup> All told, the declaration showed an agreement in principle between Joffe and Dr. Sun on the main points that still separated Moscow and Peking. It further marked a clear orientation of the Canton government toward Moscow, showing that Moscow's second overture had elicited a cordial response. From this point on, the commissars at Moscow could be assured that, whatever their success in the Forbidden City, they could bank upon advancing their fortunes in China by allying their vigorous anti-imperialist policy with the fortunes of the movement for national liberation.

<sup>26</sup> *Ibid.*, p. 289 (February 5, 1923); for the text of the agreement cf. also the *London Times*, January 27, 1923, p. 9, c. 2.

<sup>27</sup> After the capture of Urga (cf. note 11), Baron Ungern von Sternburg headed for some months an irregular Russo-Mongol "White" government in Mongolia. With the complete reconquest of Asiatic Russia, soviet troops invaded Mongolia, annihilated Baron Ungern's bands, and executed their leader. The Red troops stayed in Mongolia partly to protect the Far Eastern Republic and partly to give Moscow leverage against Peking, which was too friendly to "White" elements to suit the soviet government. Meanwhile, a "People's Revolutionary Government of Mongolia," organized along soviet lines and supported by proletarian elements friendly to Moscow, was established at Urga under the protection of the Red armies. Cf. *Bulletin Périodique de la Presse Russe*, No. 95 (October 19, 1921), and No. 105 (July 8, 1922). Cf. also *Izvestia*, May 31, 1922.

<sup>28</sup> *Bulletin Périodique de la Presse Russe*, No. 117 (March 9, 1923).

The third important mission to China, and the one destined to be the most successful, was that undertaken by Karakhan. As the inaugurator of the distinctive policy of the soviets toward the countries of the Orient in 1920—a policy based on national self-determination and liberation of the native races from foreign, “imperialist” control—Karakhan had proved his mettle in dealing with the peoples of Afghanistan, Persia, and Mongolia.<sup>29</sup> Lesser negotiators had failed at Peking; here was a dramatic opportunity for him to succeed in persuading China to cast in her fortunes with the newly-formed Union of Socialist Soviet Republics. On the eve of his departure for Peking, Karakhan characterized the outstanding questions to be adjusted between the two countries as, first, the regularization of relations with China, with particular reference to the Chinese Eastern Railway (then still manned by “White” Russians); second, the clearing up of the legal situation of soviet citizens in Chinese territory, and third, the creation of conditions favorable to the development of economic and commercial relations between China and the Soviet Union.<sup>30</sup>

Repeating with more adeptness the policy of pamphleteering and banqueting inaugurated by Joffe, Karakhan made tactful use of every opportunity to reiterate the objects of his mission. “It was no longer, as in 1920,” wrote a French critic, “the pure and simple renunciation of the rights and privileges which Russia heretofore possessed in China. It was a formal alliance between the two peoples, directed against their ‘common oppressors’—the ‘capitalist and imperialist powers,’ France, Great Britain, the

<sup>29</sup> A small “autonomous republic of the Buriats and Mongols” had been created on January 9, 1922, within the Russian Soviet Republic, but intended to include as many of the Buriat and Mongol groups in the Far East as possible. In June, 1923, this was raised to a full-fledged republic, thereby making a double bid for the union of all Mongol peoples—(1) the political union, for which such a republic furnished a nucleus, and (2) the military and economic union which existed in fact, in virtue of the Russian occupation of Mongolia. Meanwhile efforts were made to improve the means of communication into occupied Mongolia, while trade between occupied Mongolia and China was subjected to vexatious restrictions. Cf. *Izvestia*, January 12, 1922, and June 19, 1923.

<sup>30</sup> Cf. *Bulletin Périodique de la Presse Russe*, Nos. 124 (September 2, 1923); and 126 (October 25, 1923); also *Izvestia*, August 3 and September 7, 1923.

United States, and Japan."<sup>31</sup> In short, the purely passive, abnegative policy of a struggling soviet government was being transformed into a program of positive and cordial collaboration between a well-knit Union and China.

Karakhan's ultimate success was not easily attained. It soon became obvious that the Waichiaopu was following a policy of diplomatic attrition, being fearful of anticipating the Washington Conference Powers in any premature *de jure* recognition of the Soviet Union. Hence, on one pretext or another the inception of formal negotiations was left until Great Britain and Italy had acknowledged the new masters at Moscow. Then, rapidly, Wang Cheng-ting, the Chinese foreign minister, and Karakhan made their respective views clear.<sup>32</sup> In these discussions, the question of the future status of Mongolia, of the Chinese Eastern Railway, and of Orthodox Church properties in China loomed large and caused repeated controversy. But by dint of realistic concessions, especially regarding Mongolia, a final agreement was initialled on March 14, 1924.<sup>33</sup> For the moment, it seemed that recognition and a settlement were near, when suddenly Wang was disavowed by the Peking cabinet, as a result of one of those inexplicable idiosyncrasies of Chinese politics and of a virtual ultimatum from Karakhan, and Wellington Koo once more took the helm. Karakhan was thus left to face Koo, much as Joffe had been

<sup>31</sup> Contrasting Czarist and soviet policy on his arrival in Peking, Karakhan declared that the soviet government based its policy on "respect for the sovereignty of peoples, and the absolute repudiation of all territorial or other aggrandizement at the expense of other nations." To defend her interests and rights, he declared, China should be strong and powerful, "endowed with a redoubtable army," whereas the imperialistic powers wished to make of China "a new Sick Man," without an army, a prey to internal dissensions, and incapable of resisting attacks from abroad" (*L'Europe Nouvelle*, *loc. cit.*, p. 951). The significance of Karakhan's remarks, in view of the mission then being undertaken by Borodin at Canton, at the invitation of Dr. Sun Yat-sen, has recently become evident from the materials disclosed by the raid on the soviet embassy in Peking last April. It would appear that the lessons from Joffe's interview with Dr. Sun had already been taken to heart by the commissars—and the Komintern—in Moscow.

<sup>32</sup> For the text of Karakhan's initial terms cf. the *North China Herald*, Vol. 150, p. 274 (February 23, 1924); for the Chinese terms, *ibid.*, p. 354 (March 8, 1924).

<sup>33</sup> For the text of the agreement cf. the *North China Herald*, Vol. 150, p. 433 (March 22, 1924).

compelled to do, and a final settlement was necessarily delayed. The two quarreled and engaged in personalities at times, but negotiated secretly, hoping to face the diplomatic corps at Peking with a *fait accompli*. Despite an attempt on his life and veritable ultimata from Karakhan, Koo persevered in his endeavor to reach an equitable understanding. The negotiations were secretly concluded at the instance of the president, Tsao Kun, and the resulting agreements were made known on May 31, 1924. With their signature, Karakhan's mission was accomplished and the ruptured relations between Moscow and Peking were finally and formally renewed.

The Sino-Russian settlement is significant as a comprehensive attempt on the part of both China and the Soviet Union to adjust their relations to the exigencies of reality and to crystallize the bases of those relations into legal principles. The settlement embraced a treaty of amity and friendship, an agreement for the provisional management of the Chinese Eastern Railway, and seven declarations clearing up miscellaneous points in the relations of the two countries.<sup>34</sup> Of these, the treaty is by far the most important. By its terms, normal diplomatic and consular relation between the two contracting parties were immediately re-established, implying the *de jure* recognition of the Soviet Union by China.<sup>35</sup> In consequence of the resumption of relations, consular and diplomatic property was restored to the Russian government (much to the chagrin of the diplomatic corps at Peking), and Chinese and Russian consulates were gradually reopened in Russia and China respectively.<sup>36</sup>

<sup>34</sup> For the official English text of these treaties and declarations cf. the *American Journal of International Law*, Vol. 19, Supplement, pp. 53-62. A French version is given in *L'Europe Nouvelle*, Vol. VII, pp. 960-964 (July 26, 1924).

<sup>35</sup> This was a great diplomatic success for Karakhan, who was presently made the ambassador of the Soviet Union to China. It meant the first recognition of the Union by an Oriental state, preceding by six months the recognition finally obtained from Japan. China cannot, however, be said to have shown undue boldness in this move, as Great Britain, Germany, and Italy had, as noted above, already recognized the Soviet Union and France was engaged in informal conversations to that end. Cf. *Bulletin Périodique de la Presse Russe*, No. 133 (July 2, 1924), and *Izvestia*, June 1, 8, and 12, 1924.

<sup>36</sup> Cf. *Izvestia*, October 23, 1925, and *Bulletin Périodique de la Presse Russe* No. 148 (November 7, 1925) and No. 149 (December 5, 1925).



By the terms of the treaty "all conventions, treaties, agreements, protocols, contracts, etc.," concluded between China and Czarist Russia were annulled and were to be replaced by new ones "on the basis of equality, reciprocity, and justice, as well as the spirit of the declarations of the soviet government of the years of 1919 and 1920" (Article iii). The Soviet Union undertook to regard as null and void all Czarist treaties with third parties affecting China; while each government announced that it would not, in future, undertake engagements prejudicial to the rights and interests of the other (Article iv). Recognizing Outer Mongolia as "an integral part of the Republic of China," and promising respect for Chinese sovereignty therein, the soviet government pledged eventual withdrawal of soviet troops from the region (Article v), but in terms so loosely phrased as to be easily evaded in practice, as subsequent events have abundantly shown.

Of special significance was the pledge of both governments not to permit within their respective territories the existence or activity of organizations or groups aiming at the violent overthrow of the government of the other party, nor to engage in propaganda against the political and social systems of the other (Article vi). With numerous "White" Russian elements in China, the obligation of the first clause fell heavily upon Peking, whereas the onus of the second fell upon Moscow, to restrain communist propaganda—a rather impossible task for even an opportunist government.

Subsequent clauses provided for a fresh delimitation of frontiers (Articles vii–viii), the administration of the Chinese Eastern Railway as a purely commercial enterprise (Article ix), a renunciation of all Czarist concessionary rights (Article x), and of the Russian share of the Boxer indemnity (Article xi). They also stipulated the relinquishment of rights of extraterritoriality and consular jurisdiction (Article xii), the negotiation of a commercial treaty and a customs tariff "in accordance with the principles of equality and reciprocity" (Article xiii), and the mutual settlement of pecuniary claims (Article xiv).

It would appear from analysis of the treaty and a comparison of it with other soviet settlements with foreign powers, that the

agreement was entirely in keeping with the trend of soviet policy with regard to backward countries, and that, save for the provisions as to Mongolia and the Chinese Eastern Railway, it embodied the gist of Karakhan's original renunciation-restoration-reconciliation program, tempered by Chinese ideas of property, equality, and reciprocity. It is, then, the hybrid of the Soviet and Chinese nationalist programs, and, as such, unique in the treaty history of the Far East.

The declarations accompanying the treaty settlement were mainly technical elaborations of the promises made in the treaty proper. Outstanding among them was the third, declaring China's refusal to recognize as valid any treaty, agreement, etc., concluded between Russia since the Czarist régime and any third party or parties, affecting the sovereign rights and interests of China. This was intended to give China a distinct leverage in dealing with the soviet government. In return, however, China, by the fourth declaration, agreed not to cede to anyone else the rights abandoned by the soviet government. By the fifth declaration China pledged to use for educational purposes the remitted Boxer indemnity, therein following American practice. The sixth declaration definitely declared soviet nationals amenable to Chinese judicial jurisdiction, a condition which, contrary to the expectations of most western countries, does not seem to have had adverse effects in its workings.<sup>37</sup>

Such was the settlement whereby China and Soviet Russia came to terms following the disruption of their relations by war and revolution. It was a settlement made possible, on the one hand, by the military success of the soviets in reconquering the whole of the old Russian domain in Asia, and, on the other, by

<sup>37</sup> Little difficulty other than that resulting from congested dockets and limited prison facilities has been encountered by soviet nationals, according to the testimony of M. Pergament, legal adviser to the soviet embassy in Peking. In the opinion of an American expert, however, this has been due to the leniency of Chinese courts toward Russian offenders rather than to any other cause. Cf. H. S. Quigley, "Extraterritoriality in China," *American Journal of International Law*, Vol. 20, p. 64. The problem has been complicated by the presence on Chinese soil of several hundred thousand Russians who are the avowed and bitter enemies of the soviet régime. Many of these have been naturalized by the Chinese government.

the natural divergence of policy between China and her war-time allies, a divergence accentuated by the long delays in the ratification of the Washington treaties. It marked in a distinctive fashion a formal step forward in the recovery of China's national rights, and, as such, has undeniably been instrumental in modifying, to an appreciable extent, the tenacity with which the treaty powers clung to their conventional and concessionary rights. But it was not only another stage in the policy of recovery; it marked an objective realization of the community of Russian and Chinese interests and policies in the Far East. For Russia it meant the widening of the breach which nationalist resentment was bringing about between China and the treaty powers, and the creation of a potentially effective political bloc in Far Eastern diplomacy; for China, it meant the opening of a new period in her struggle for liberation from her servitudes to Occidental powers.

#### IV

The Peking settlement may be said to represent the equipoise of forces as between Russia and China at the time of its signature. But such a settlement could not remain static, and a continuous adjustment to the changing trend of events in each domain was predestined. For Russia, the basic objectives of policy have been two: the security of her territory and the spread of her revolution. The execution of these policies has centered around the foci of Mukden, Urga, and Canton. For China, the problems of policy have not been dissimilar: first, the spreading of the democratic revolution has, in the eyes of her nationalist leaders, been the principal objective, through the attainment of which would come, second, solidity, stability, unity, and liberation, while to the northern leaders the principal concern has been the maintenance—with outside aid if need be—of precariously acquired rights and the securing of a jeopardized political position. This duality of objectives has involved a separate policy on the part of each government in China and a dualistic policy of a necessarily two-faced character on the part of Moscow. In consequence, that policy has assumed different aspects in relation to the particular regions to which it was applied.

In Manchuria, the Soviet Union has dealt belligerently whenever it has had to face Chang Tso-lin, and the tale of the Chinese Eastern Railway since the Peking settlement has been replete with "incidents," "impasses," and wrangling negotiations. The drafting of the Mukden Agreement of September 20, 1924,<sup>38</sup> merely furnished the occasion for the first of the clashes between the Soviet Union and the Manchurian war-lord; the two seem to represent the permanent antagonism of the whole nineteenth-century railway imperialism in eastern Asia under new forms and masked by a new ideology. Hence the subsequent clashes over the personnel, the schools, the river fleet, the management of the railway, and the intermittent threats of Moscow to liquidate the entire matter with the aid of the Red army.<sup>39</sup> The end is not yet. The latest phases of the successively belligerent or quiescent quarrel and the manoeuvring for strategic diplomatic position relate to the tangled skein of intrigue surrounding the Russo-Asiatic Bank and its presumptive beneficial ownership of the railway, as represented by Czarist securities held in French hands—the treaty of Peking to the contrary notwithstanding.<sup>40</sup> Despite temporary adjustments of a palliative character, it is hard to believe that the present status of forces in and on the

<sup>38</sup> The text of the agreement is given in the *China Year Book* (1925), pp. 797–800. Cf. also *Foreign Policy Association Information Service*, "The Chinese Eastern Railway," Vol. II, pp. 6–9 (February 27, 1926), and *Bulletin Périodique de la Presse Russe*, No. 137 (November 22, 1924).

<sup>39</sup> The whole problem of the Chinese Eastern Railway is, of course, too complex to be treated here. On the various Sino-Soviet crises concerning the railway cf. the following sources: *Foreign Policy Association Information Service*, "The Chinese Eastern Railway," Vol. II, pp. 9–10; *Bulletin Périodique de la Presse Russe*, No. 154 (February 9, 1926); *Pravda*, February 2, September 4 and 9, 1926; *London Times*, September 23, 1926; and *L'Europe Nouvelle*, Vol. IX, pp. 1385–1386 (October 2, 1926).

<sup>40</sup> It is likewise impossible to touch here on the numerous ramifications of the Russo-Asiatic Bank controversy. It is safe to say, however, that the soviet government, having attempted in the treaty of Peking to outlaw all other claims than those of the contracting parties to the railway, would not recognize any agreement regarding the railway entered into by any other powers with any faction in China, such as represented, for example, by Chang Tso-lin. On the Russo-Asiatic Bank cf. *L'Europe Nouvelle*, Vol. IX, pp. 1538–1540 (November 6, 1926); *Pravda*, September 16, 1926; and *Bulletin Périodique de la Presse Russe*, No. 137 (September 30, 1926), and No. 158 (November 20, 1926).

borders of Manchuria is regarded as final by either Chicherin or Chang Tso-lin, and more controversy may be expected to develop, although it is likely to be kept within such bounds as will preclude Japanese intervention.

In Mongolia a different policy has been necessary. A region successively under Japanese, North Chinese, and "White" Russian influences from the days of the twenty-one demands to the extermination of Sternburg could not lightly be left to the caprices of Peking's statesmanship, nor to the purchasable loyalties of native khans. Hence, with the Red army still in occupation of Urga, it was good policy for the Soviet Union to foment revolution and awaken in a slumbering proletariat the ideals of national self-determination. A well-prepared *coup d'état* at a psychological moment—and the Mongolian Republic was born,<sup>41</sup> to be gradually absorbed *de facto* into the politico-economic system of the Soviet Union, despite the unctuous phraseology of the Peking treaty. After three years of soviet reconstruction, Mongolia has definitely become a bulwark of soviet power and a link in the soviet system of penetration into the Orient.<sup>42</sup>

The third center of soviet activity has been Canton. Once legal leverage had been acquired at official Peking, it was important for Russia to intrench herself at Canton and to make use of the

<sup>41</sup> *Pravda*, June 21, 1924. Official proclamation of the People's Republic of Mongolia did not take place until July 8, 1924. In November, the constitution of the new Mongolian state was promulgated (*Pravda*, November 29, 1924). It is, from its bill of rights through its detailed administrative machinery, a Mongolian replica of the constitution of the Russian Soviet Republic. Cf. *Bulletin Périodique de la Presse Russe*, Nos. 134 (July 19, 1924); 135 (September 11, 1924); and 138 (December 23, 1924), which contains an analysis of the constitution.

<sup>42</sup> On March 6, 1925, Karakhan notified the Waichiaopu that the Red troops had been withdrawn. Chicherin described the situation at that time by saying that "the soviet government recognizes Mongolia as a part of the whole Republic of China, enjoying, however, autonomy so far-reaching as to preclude Chinese interference with internal affairs and to permit the establishment of independent relations by Mongolia" (*Izvestia*, March 6, 1925). "The People's Republic of Mongolia," wrote a French observer, "although outside the framework of the Union of Socialist Soviet Republics, evolves, notwithstanding, in the order followed by the former People's Republics of Bokhara and Khorezmia, which later became soviet republics, then socialist, and were incorporated, after their dissolution, in the soviet republics of Central Asia" (*Bulletin Périodique de la Presse Russe*, No. 139 (January 31, 1925)).

nationalist movement, as she had done in Afghanistan, Central Asia, and elsewhere, to pursue her policy of national liberation as a phase of the larger world revolution that is still planned in the Kremlin. Hence, while installing Karakhan as the official ambassador at the *de jure* capital, Moscow simultaneously sent forth to Canton, increasingly the *de facto* center of nationalist authority, an able commissioner in the person of Borodin. To maintain external calm and official connection with the Waichiao-pu, while mobilizing the student intelligentsia and "boring from within" at the vitals of the Peking government, was the difficult rôle assigned in the diplomacy of Moscow to Karakhan, and it must be admitted that the sleek Armenian commissar-ambassador played his cards well. So long as Canton was merely a center of sputtering rebellion, Russia could well afford to let her agitators, like Borodin, utilize this divine discontent in furtherance of her own aim of evicting the "imperialist" powers from China. So long as political authority remained *de facto* in the North, it was wisdom to have Karakhan in Peking. So Karakhan remained, striving to detach the "Christian" general, Feng Yu-hsiang, from the northern cause and to employ him in the services of the nationalist revolution. During this period, while Feng was in power in Peking, Karakhan was able to induce the Waichiao-pu to adopt a policy of vigorous self-assertion, as at the time of the blockade of Tien-tsin in March, 1926.<sup>43</sup> But with the change of fortunes which sent Feng flying to Kalgan, on the outskirts of Mongolia, a policy of full-fledged support to Peking was seen to be futile, since an open "vacancy of power" existed in Peking, and the rival tuchuns could not be trusted. Hence the recall of Karakhan "on leave" to Moscow could have but one explanation. He was too valuable a diplomatist to waste upon a hopeless political situation, and could be of more use in command in Moscow than in masterly inactivity in Peking. It thereupon became Karakhan's task at Moscow, where Feng had taken refuge, to reach an understanding with the general, pledging him

<sup>43</sup> Cf. Nicholas Roosevelt, "Russia and Great Britain in China," *Foreign Affairs*, Vol. 5, pp. 80-90 (October, 1926), at p. 89.

to coöperation with the plans of the soviet government, after which he was abundantly supplied with war materials and subsidized out of the soviet coffers.<sup>44</sup>

Meanwhile, from 1923 to 1926 the spreading of the revolutionary spirit, the socializing of the revolution, the actual indoctrination of Chinese youth, and even a fringe of the Kuomintang party, with the principles of communism, the whipping into shape of the nationalist armies for the final drive against Peking which was, in the soviet scheme, to consummate the movement for Chinese national unification and liberation, were left to Borodin and General Galen, with whom Karakhan kept in the strictest liaison from the recesses of the soviet embassy.<sup>45</sup>

After Karakhan's return to Moscow, soviet diplomacy could scarcely dissemble or hide the inescapable contradictions between professed friendship to Peking and actual support of Canton. The Soviet Union, openly threatening in Manchuria, securely entrenched in Mongolia, and in working alliance with the South, could only "smile and smile and be a villain" in Peking. Chernykh, the chargé who succeeded Karakhan, was merely a complacent soviet bureaucrat who took his orders from Borodin and was a go-between for Feng Yu-hsiang and the southern leaders of the Kuomintang. After the establishment of the nationalist government at Hankow, Chernykh was regarded, of necessity, as a stop-gap envoy to hold the fortress of sovietism in Peking until the tidal wave of nationalist victory should reach the Forbidden City. This seems to have been the design of Moscow, which Chang Tso-lin's raid on the soviet embassy last April not only clearly revealed but abruptly terminated.

Once the complicity of the soviet government was established by documentary evidence,<sup>46</sup> the Commissariat for Foreign Affairs

<sup>44</sup> This, though long surmised in Peking, was not clearly proved until disclosed by the documents seized in the raid on the soviet embassy in Peking, April 6, 1927. Cf. "The Soviet Plot in China" (published by the Peking Metropolitan Police), Documents 4, 5, 8, 12, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26.

<sup>45</sup> *Ibid.*, Documents 7, 9, 10, 11, 13, and, primarily, 28.

<sup>46</sup> *Ibid.*, Documents 1, 2, 3. Cf. also *North China Herald*, Vol. 163, pp. 63-64 (April 9, 1927).

had in fact no choice except to protest ostentatiously<sup>47</sup> and withdraw Chernykh without actually destroying the legal ties still binding it to Peking. It was no longer possible for the soviet government to follow its policy of duplicity in China, and its every sympathy bound it to the new concentration of forces at Hankow. Even before the celebrated raid, the commissars had commissioned Comrade Aralov, fresh from a diplomatic success at Riga,<sup>48</sup> to proceed to Hankow as an "unofficial representative;" after the raid, action of this sort was an imperative necessity. With a representative of the Union unofficially on hand, Borodin could afford to retire to the background and, for a while at least, play the rôle of the man in the shadow.

It is not material here to discuss the inner manoeuvrings of the Nanking and Hankow factions of the nationalist camp as to the rôle which communism should play in the Kuomintang party. Let it suffice for our purposes to note that the principle formulated by Joffe and Sun Yat-sen, that the movement for national reunification must first be completed before communism can be implanted, appears to remain valid. For the time being, even as in Russia itself, communism has been forced to make a "strategic retreat" in the face of nationalist sentiment. Whether that retreat is to be permanent, as in Russia, remains for the future to disclose. At all events, the apostles of the Communist International have thus far refused to admit their discouragement.<sup>49</sup>

<sup>47</sup> For the text of the U.S.S.R. protest, cf. *North China Herald*, Vol. 163, pp. 97 ff. (April 16, 1927). A French text of the protest is found in *L'Europe Nouvelle*, Vol. X, pp. 608-609 (May 7, 1927). For the Chinese rejoinder cf. *North China Herald*, Vol. 163, p. 145 (April 23, 1927). The Waichiaopu, which had never sent a formal ambassador to Moscow, although it decided to appoint one, thought it best to keep a chargé at the soviet capital notwithstanding the withdrawal of the soviet mission.

<sup>48</sup> Cf. *London Times*, March 10, 1927, p. 13, c. 6.

<sup>49</sup> Cf. *The Communist International*, Vol. IV, No. 10 (June 30, 1927), p. 188, giving the views of the May plenum of the Executive Committee of the Communist International, and p. 200, where Stalin reviews "The Revolution in China and the Tasks of the Communist International." This note is further developed by Bukharin in a survey of "Developments in the Chinese Revolution," *ibid.*, No. 11 (July 30, 1927), p. 210.



## V

Surveying the decade in retrospect, three completed phases of Sino-Soviet relations are evident: (1) the period of estrangement (1917-20), singularly unfortunate for both Russia and China; (2) the period of negotiation (1920-24), of conscious readjustment of both parties to a changed international order; and (3) the period of official reconciliation and readjustment (1924-27), marking a notable advance in China's recovery of her rights. The last period was definitely closed with the withdrawal of Chernykh, and a fourth cycle of events, replete with possibilities, has been begun. The question of what it holds for the future relations of China and the Soviet Union is left for the next decade to reveal. Certain trends, however, may be noted. The new period is admittedly one of transition, in which the various social phases of the Chinese revolution will play no mean part in molding the relations of the two countries. It is a phase in which the oscillations of the Chinese populace between the ideology of social revolution and that of bourgeois nationalism will be a determining factor. If China turns to the left, and the agrarian and social character of her revolution looms large, she may be inclined to follow both the pattern and the discipline of Moscow, as hoped by both the commissars and the Komintern. If, on the other hand, China turns to the right, if nationalism flows too strong, she may discard the ideology of social revolution, and, conscious of new national strength and a unity achieved with the assistance of Moscow, may turn her back upon the Soviet Union to pursue an independent course of national development and foreign policy. Such a culmination would constitute a wide departure from Moscow's plans and wishes.

## CONSTITUTIONAL LAW IN 1926-1927

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT  
OF THE UNITED STATES IN THE OCTOBER TERM, 1926

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### A. QUESTIONS OF NATIONAL POWER

#### I. EXECUTIVE POWER

##### *a. The President's Power of Removal*

The most conspicuous constitutional decision rendered by the Supreme Court during its 1926 term, or for many a preceding term, was in the case of *Myers v. United States*.<sup>1</sup> It is here held that the power of the President to remove executive officers appointed by him with the consent of the Senate cannot be restricted by Congress. On the question of the removal of such officers the Constitution is entirely silent. It is an interesting commentary on the process by which we make constitutional law that a problem as important as this, a problem which was debated at length in 1789, upon which presidents have acted and congresses have passed statutes, should now, after 137 years, be definitely settled for the first time, and be settled now only because the late Mr. Myers saw fit to sue the government in the Court of Claims for his salary.

The facts in the case are simple. In 1917 President Wilson appointed Myers to a first-class postmastership at Portland, Oregon, for a term of four years. In 1920, by direction of the President, he was removed from office. A statute passed in 1876<sup>2</sup> and still in force provides that "postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate and shall hold their offices for four years unless

<sup>1</sup> 272 U. S. 52. The constitutional aspects of the case have been widely discussed. The most exhaustive treatment is that by E. S. Corwin, "Tenure of Office and the Removal Power under the Constitution," 27 *Columbia Law Review*, 353. See also G. B. Galloway, "The Consequences of the Myers Decision," 61 *American Law Review*, 481; a note by J. A. Fairlie, 21 *Illinois Law Review*, 733, and two unsigned notes in 25 *Michigan Law Review*, 280, and 36 *Yale Law Journal*, 390. See also the brief article by T. R. Powell, "Spinning Out the Executive Power," *New Republic*, November 17, 1926, p. 369.

<sup>2</sup> Act of July 12, 1876, 19 Stat. at L. 80.

sooner removed or suspended according to law." The removal of Myers was never referred to the Senate for its consent. Nor was anyone appointed by the President to fill Myers' unexpired term, a fact which is significant since the senatorial confirmation of such an appointment would constitute consent to the removal of the appointee's predecessor.<sup>3</sup> Myers protested against his removal in every way open to him at the time, and when the four-year period for which he had been appointed had expired he sued in the Court of Claims for the salary of which his removal had deprived him. His position was clear and definite, i.e., his removal by the President was in violation of the act of 1876. The question of the validity of that act was squarely raised on an appeal to the Supreme Court from the judgment of the Court of Claims against Myers.<sup>4</sup>

The Supreme Court clearly appreciated the importance and difficulty of the case. After first argument in December, 1924, the case was assigned for re-argument in April, 1925. The Court invited Senator Pepper of Pennsylvania to present a brief as *amicus curiae* for the appellant. The case was argued for the government by Solicitor-General James M. Beck. The decision rested upon a six-to-three vote of the Court. The opinion of the majority was written by Chief Justice Taft and occupies seventy-one pages in the official reporter, while Mr. Justice McReynolds wrote a sixty-one page dissenting opinion and Mr. Justice Brandeis a fifty-six page dissent. A half-page dissent was filed by Mr. Justice Holmes.<sup>5</sup> It was pointed out during the argument that this is the first case in which the government through the Department of Justice has appeared in the Supreme Court to attack the constitutionality of an act of Congress.

The decision of the Court that Congress may not restrict the President's power to remove officers appointed by him with senatorial consent is supported in Chief Justice Taft's long opinion upon two main grounds. One of these is historical, i.e., that the long-established practice of the government has been in accord with the Court's decision; the other is constitutional or inferential, i. e., that the removal power is part of the President's broad grant of executive authority which under the doctrine of separation of powers may not be restricted by Congress. Each of these arguments may be briefly summarized.

<sup>3</sup> *Wallace v. United States*, 257 U. S. 541.

<sup>4</sup> 58 Ct. Cl. 199. The Court of Claims gave judgment against Myers on the ground of undue delay in suing. The constitutional question was not considered.

<sup>5</sup> These opinions, together with briefs of counsel and reports of the oral arguments, are printed as Senate Document 174, 69th Cong. 2d. Sess.

The historical argument is built primarily upon what the Chief Justice calls the "decision of 1789." This "decision" took the form of a vote or series of votes in the First Congress upon the establishment of a department of foreign affairs. It was originally voted in the House that such a department be created under a secretary appointed by the President with the advice and consent of the Senate, and removable by the President. After extensive debate this was amended in two ways. First, a clause was added clearly implying unrestricted removal power in the President alone by alluding to vacancies created by the exercise of such power.<sup>6</sup> Second, the clause granting the power of removal to the President was stricken out, on the ground that such a grant implied that without it the President would not have the power. The Senate, by a close vote, concurred in these actions. By this "decision," declares the Chief Justice, Congress recognized and established the exclusive and untrammelled power of the President to remove executive officers whom he appoints. "It was soon accepted as a final decision of the question by all branches of the government." Hamilton, Kent, Story, and Webster are quoted as concurring, not in each instance in the correctness of the "decision of 1789," but in the belief that that action finally determined the law of removals.

Some difficulty arises from part of Marshall's opinion in *Marbury v. Madison*.<sup>7</sup> If either Jefferson or Marshall believed that the President could remove Marbury from office, the whole controversy as to the delivery of the latter's commission would have been futile and beside the point. But Marshall rejected this view and declared: "As the law creating the office gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable, but vested in the officer legal rights which are protected by the laws of his country." Chief Justice Taft, however, dismisses this statement as obiter dictum, suggesting that even if it was not dictum it has been overruled by later decisions of the Court, and that, anyway, Marshall's mature judgment on the matter was expressed in 1807 in the "Life of Washington" and supported the "decision of 1789."

Furthermore, it is pointed out, later congresses followed and enforced the "decision of 1789" for seventy-four years. The other departments were created by the same formula which was applied to the

<sup>6</sup> This clause referred to a chief clerk in the department who, "whenever the principal officer shall be removed from office by the President of the United States," should have custody of the papers and records of the department.

<sup>7</sup> 1 Cranch 137.

Department of Foreign Affairs, leaving the power of removal to be implied from the "silence of Congress." "Occasionally, however, we find that Congress thought it wiser to make express what would have been understood," and accordingly in several acts creating federal offices the statute specifically declares that such officers shall be removable at the pleasure of the President. But this apparent grant of the removal power by Congress is not a grant at all, but merely a description of a power already inhering in the President. This we know to be true because the Supreme Court specifically said so in 1897 in the *Parsons* case,<sup>8</sup> in which the President was held to have the power to remove at pleasure district attorneys appointed for a four-year term under a statute from which the removal clause was omitted.

There follows an analysis of the various statutes, beginning in 1866 and continuing down to date, by which Congress has apparently repudiated the "decision of 1789" by restricting the President's power to remove executive officers or even denying it altogether. Most conspicuous of these is the Tenure of Office Act of 1867.<sup>9</sup> After indicating that wherever the issue has been sharply presented the President has always protested against these attempted encroachments upon his power, the Chief Justice goes on to say that these later statutes were for the most part passed "during a heated political difference of opinion between the then President and the majority leaders of Congress" and that "we are certainly justified in saying that they should not be given the weight affecting proper constitutional construction to be accorded to that reached by the First Congress of the United States during a political calm and acquiesced in by the whole government for three-quarters of a century, especially when the new construction contended for has never been acquiesced in by either the executive or the judicial departments."

So much for the historical basis of the Court's decision. The constitutional argument advanced by the Chief Justice is much more important than the historical evidence just reviewed. It is perfectly clear that such power of removal as the President enjoys is an implied power. Implied from what? Implied from the general grant of executive power in Art. II<sup>10</sup> and the further injunction in the same article that the

<sup>8</sup> *Parsons v. United States*, 167 U.S. 324. The legislative grant of removal power is specifically held declaratory.

<sup>9</sup> Act of Mar. 2, 1867, 14 Stat. at L. 430.

<sup>10</sup> "The executive power shall be vested in a President of the United States of America." Art. II, Sec. 1, Cl. 1.

President "shall take care that the laws be faithfully executed." By placing it on this broad ground the Court avoids the difficulties which would result from implying the removal power solely from the President's power of appointment, although it is admitted that the power of appointing provides a supplementary and supporting basis for implying the power of removal. It is clear that this argument rests upon the conviction which Mr. Taft's presidential experience undoubtedly confirmed and emphasized, that the President cannot effectively and responsibly administer his office unless he can control his subordinates through an unrestricted power of removal. Speaking of cabinet officers, the Chief Justice declares: "The moment that he loses confidence in the intelligence, ability, judgment, or loyalty of any one of them, he must have the power to remove him without delay. To require him to file charges and submit them to the consideration of the Senate might make impossible that unity and coördination in executive administration essential to effective action." He then adds: "The imperative reasons requiring an unrestricted power to remove the most important of his subordinates in their most important duties must, therefore, control the interpretation of the Constitution as to all appointed by him." To allow a senatorial check upon removals would, in short, "make it impossible for the President in case of political or other difference with the Senate or Congress to take care that the laws be faithfully executed." If it had been intended by the framers of the Constitution to allow Congress to weaken in this manner "the great independent executive branch of the government," such a power would have been "included among the specifically enumerated powers in Article I, or in the specified limitations on the executive power in Article II."

The dissenting opinions seem clearly to have the better of the argument, both in historical accuracy and in logic. In regard to the "decision of 1789" the following points are made: (1) The "decision" had no bearing upon the question of the power of Congress to control or restrict the President's power of removal; it merely held that in the absence of legislation he had the power. It seems clear that few, if any, of those voting on the issue in 1789 believed that the President had an uncontrollable power of removal. They were voting to defeat the inference that the President would have no power of removal unless granted by statute—which is very different from the view that he enjoyed such power entirely free from statutory regulation or restriction. (2) The "decision of 1789" concerned the President's power to remove the head

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of one of the major executive departments. It is very doubtful if the members of Congress looked upon such a high post in the same light in which they viewed "inferior" offices. A very sound argument supporting an unrestricted power in the President to remove cabinet officers might be built up on grounds which have little or no bearing upon a similar removal power with reference to minor functionaries. (3) The "decision" was, after all, merely a congressional opinion, not based upon a consideration of all the issues involved, nor grounded upon substantial governmental experience. It should, therefore, be given no more weight than, perhaps not so much as, the long-standing congressional practice of restricting the executive power of removal, a practice which has been embodied in numerous statutes extending over a long period of time. (4) The conclusion of the Chief Justice that Marshall's statement in *Marbury v. Madison* that the President lacked the power to remove Marbury was obiter dictum is flatly contradicted on grounds both of reason and of later decisions of the Court alluding to it as part of the necessary reasoning.<sup>11</sup> One can not read the elaborate historical argument in the dissenting opinions without feeling a keen appreciation of Senator Pepper's remark in his brief: "I appeal to the record, because when this great tribunal declares the law we all bow to it; but history remains history, in spite of judicial utterances on the subject."<sup>12</sup>

The dissenting justices sharply attack the majority doctrine that an unrestricted presidential power of removal must be implied from the general grant of executive authority and the duty to see that the laws are faithfully executed. While admitting that the power of removal must be deemed to exist somewhere, even though the Constitution does not mention it, they point out that the power may much more logically be implied from the congressional power to create offices and prescribe the tenure thereof than from the broad grant of executive power. The power of removing an officer is an executive function, but the power to prescribe the conditions under which this may be done is legislative, a distinction which the majority argument overlooks. Furthermore, such a rule of construction is dangerous. As Mr. Justice McReynolds says: "If the phrase 'executive power' infolds the one now claimed many others heretofore totally unsuspected may lie there awaiting future supposed necessity; and no human intelligence can

<sup>11</sup> *McAllister v. United States*, 141 U. S. 174, at 189.

<sup>12</sup> Even better is Professor Corwin's terse comment, *op. cit.*, 369, "what a judge cannot *prove* he can still *decide*."

define the field of the President's permissible activities." Sound constitutional interpretation requires a strict rather than a liberal construction of executive power; or, as Mr. Justice Brandeis put it, "a power implied on the ground that it is inherent in the executive must according to established principles of constitutional construction be limited to 'the least possible' power adequate to the end proposed." It would seem clear, therefore, that the President's duty to see that the laws be faithfully executed "is a duty," to quote Mr. Justice Holmes, "that does not go beyond the laws or require him to do more than Congress sees fit to leave within his power." Or, as Mr. Justice McReynolds sums it up, "A general duty to enforce all laws cannot justify an infraction of some of them."

The difference of opinion as to the practical results of the Myers decision has also been very sharp.<sup>13</sup> Even the immediate legal consequences are in some doubt. It is clear that the decision prevents congressional control of the President's power to remove officers appointed by him with senatorial consent. Whether his power to remove an officer appointed by him alone is also unlimited is not settled, although the reasoning of the Court seems broad enough to apply to this type of appointment.<sup>14</sup> It is specifically declared in Chief Justice Taft's opinion that when Congress exercises its power of vesting the appointment of "inferior officers" in the heads of departments or in the courts of law it may control or limit by statute the removal of such officers, but that if it does not do so the President may remove them in the exercise of his general executive authority. With regard to the removal of a judicial officer under statute and not under Article III of the Constitution, Chief Justice Taft observes by way of dictum that whether such an officer "can be removed by the President alone without the consent of Congress, . . . whether Congress may provide for his removal in some other way, present considerations different from those which apply in the removal of executive officers, and therefore we do not decide them." In another dictum the Chief Justice refers to the status of the great independent commissions or tribunals, such as the Interstate Commerce Commission, the Civil Service Commission, and the like, and while declaring that the President ought not to influence

<sup>13</sup> This is shown not only in the speculations indulged in by the justices who wrote opinions, but also in most of the articles cited in note 1, *supra*, p. 70. For a careful and sensible analysis of this phase of the case see H. L. McBain, "Consequences of the President's Unlimited Power of Removal," 41 *Political Science Quarterly*, 596.

<sup>14</sup> Professor McBain takes the opposite view, *op. cit.*, 600.



or control their decisions, he states plainly that such decisions may properly be made a reason for their dismissal by the President. It would seem equally logical, however, to surround these quasi-judicial or quasi-legislative bodies with the same immunity from an uncontrolled presidential removal power as is enjoyed by judicial officers of the group above mentioned. The Court, it is believed, could reach such a result without doing violence to the logic of its decision of the present case.

It is the belief of the writer that, on the whole, the practical consequences of the Myers decision will be satisfactory rather than otherwise. That it enlarges the opportunity for the abuse of the presidential power of removal is obvious. That it centralizes presidential responsibility for such removals and for the entire administration of the executive branch of the government is equally obvious. The federal civil service is in no danger, since Congress can place and keep it beyond the reach of direct presidential power of removal. Even where the abuse of the removal power would be most objectionable, in the case of the so-called permanent commissions, it should be remembered that political checks, having their strength in public opinion and in the necessity for senatorial confirmation of the new appointment, are much more efficacious than the fear of judicial restraint. The modern principles of administration do not leave room for a serious quarrel with a doctrine which makes the President the actual and effective head of an administrative system of which he has always been the nominal head.

*b. The President's Power of Pardon*

The power of the President to commute a death sentence to life imprisonment without the consent of the accused is upheld in *Biddle v. Perovich*.<sup>15</sup> Perovich had been sentenced to death in Alaska in 1905 after various delays and respites. In 1909 President Taft commuted his sentence to life imprisonment. Perovich made two ineffectual attempts to secure a pardon, and in 1925 he sued out a writ of habeas corpus alleging that the commutation of sentence was without his consent and that since it changed the penalty to one of a different sort such consent was necessary. Until now the Supreme Court has recognized the necessity of consent to make a pardon valid. In 1833 Chief Justice Marshall declared: "A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may be rejected by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force

<sup>15</sup> 274 U. S. 480.

it on him."<sup>16</sup> This doctrine was cited with approval by the Supreme Court in 1915 in the case of *Burdick v. United States*,<sup>17</sup> which held that the President could not compel a man to accept a pardon offered for the purpose of breaking down his immunity from self-incrimination. In the present case Mr. Justice Holmes rejects this theory completely. He says: "A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed. . . . Just as the original punishment would be imposed without regard to the prisoner's consent and in the teeth of his will, whether he liked it or not, the public welfare, not his consent, determines what shall be done. . . . We are of the opinion that the reasoning of *Burdick v. United States* is not to be extended to the present case." Furthermore, the change in sentence here made falls within the President's power of pardon, since "by common understanding imprisonment for life is a less penalty than death." It is interesting to note that the Supreme Court has answered in this case the question so insistently raised by the late Gerald Chapman as to the necessity of the acceptance of a pardon and has answered it as the lower federal courts disposed of it in that case.<sup>18</sup>

## II. LEGISLATIVE POWER

### *a. Senate's Power to Compel Attendance of Witnesses*

What the Senate may have lost in possible power through the Myers decision it more than regained by the strengthening of its inquisitorial authority in the case of *McGrain v. Daugherty*.<sup>19</sup> Here it is held that the Senate may compel the attendance of a witness before one of its committees in order to secure information necessary to aid it in legislating. In February, 1924, the Senate appointed a special committee to investigate the Department of Justice and the failure of the Attorney-General to prosecute Messrs Fall, Doheny, Sinclair, Forbes, and others for alleged violations of federal law. The committee subpoenaed Mally S. Daugherty, brother of the Attorney-General, ordering him to appear with various books and records of the bank of which he was president. Daugherty ignored two such summons, whereupon the Senate authorized McGrain, its sergeant-at-arms, to arrest him and bring him before

<sup>16</sup> *Ex parte Wells*, 18 Howard 307.

<sup>17</sup> 236 U. S. 79.

<sup>18</sup> *Chapman v. Scott*, 10 Fed. (2d.) 156; same, 10 Fed. (2d.) 690.

<sup>19</sup> 273 U. S. 135.

the bar of the Senate to answer questions. On a habeas corpus action, the federal district court held the Senate without power to compel such attendance.<sup>20</sup> The question of the right of one of the houses of Congress to exercise the power here claimed had never before been squarely raised. After disposing of several technical objections, the Court held, broadly, that "the power of inquiry with process to enforce it is an essential and appropriate auxiliary to the legislative function." It emphasized what had been previously held,<sup>21</sup> i.e., that this authority does not extend to an unrestrained prying into private affairs. But it concluded that the investigation under review was for the purpose of securing information regarding one of the departments organized by Congress, and that since the only legitimate object the Senate could have in conducting the inquiry was to aid it in legislating, it must be presumed that this was actually its object. From the theory of the case it follows that the witness may refuse to answer questions not pertinent to the inquiry or beyond the authority of the Senate to ask.<sup>22</sup>

*b. Delegation of Legislative Power to the President*

In *United States v. Chemical Foundation*<sup>23</sup> it was held that no unconstitutional delegation of legislative power to the President was involved in the sections of the Trading with the Enemy Act<sup>24</sup> which gave the Alien Property Custodian full power, acting under the President, to dispose of enemy properties. The President's power to determine the terms and conditions of the sales of such property was unrestricted, but this was merely the executive application of the general rule laid down by the act. The sale by the Custodian to the Chemical Foundation of various German patents was attacked in this case on a wide variety of grounds including fraud and felony, but the entire transaction is given a clean bill of health by the Court.

*c. Regulation of Commerce*

Under the Valuation Act of 1913,<sup>25</sup> as amended in 1920<sup>26</sup> and 1922,<sup>27</sup>

<sup>20</sup> 299 Fed. 620.

<sup>21</sup> *Kilbourn v. Thompson*, 103 U. S. 168.

<sup>22</sup> The doctrine of this case had been earlier announced by the New York Court of Appeals in *People ex rel McDonald v. Keeler*, 99 N. Y. 463, which is here quoted with approval.

<sup>23</sup> 272 U. S. 1.

<sup>24</sup> Oct. 6, 1917, 40 Stat. at L. 411, and later amended.

<sup>25</sup> Mar. 1, 1913, 37 Stat. at L. 701.

<sup>26</sup> Feb. 28, 1920, 41 Stat. at L. 456.

<sup>27</sup> June 7, 1922, 42 Stat. at L. 624.

the Interstate Commerce Commission was required to make a careful study of the properties of all the rail carriers in the country, about 1,800 in number, and determine a "final valuation" for each which should be "prima facie" evidence in any controversy under the act. In *United States v. Los Angeles & S. L. R. Co.*<sup>28</sup> an injunction was sought by the railroad to annul this final valuation and enjoin its use for any purpose. In addition to numerous minor and technical objections, the carrier attacked the valuation on the broad basis of the principles applied by the Commission in reaching it. A decision on the merits would have been of outstanding importance as subjecting to review by the Supreme Court the soundness of the Commission's theory and procedure of valuation. But the Court held that until the valuation is made the basis of some action affecting the road the question of its correctness remains moot and the Court is without jurisdiction to pass on it. When the valuation comes to be actually applied as a basis for rate-making or in some other way it can properly be attacked, and "it's [the Commission's] conclusions, if erroneous in law, may be disregarded. But neither its utterances, nor its processes of reasoning, as distinguished from its acts, are a subject for injunction".

*United States v. Berwind-White Coal Mining Co.*<sup>29</sup> upholds an important order of the Interstate Commerce Commission governing the distribution of cars among bituminous coal mines in times of car shortage. It prohibits any carrier from placing for loading at any mine more than the mine's ratable share of all cars available for use in the district. The ratable share depends, of course, on the mine's daily output, and the total number of cars available includes "assigned cars," i.e., those privately owned by the mine, or owned by a carrier and assigned to the mine to carry the road's own fuel. In other words, the mine is deprived of the advantage of using its own cars or cars assigned to it by special contract with consignees. The order in excess of the quota, does not, however, divert these assigned cars to other mines. Mr. Justice Brandeis, after remarking that "Congress could exclude private cars from interstate railroads," considers and rejects the contention that "the Commission's order amounts to a denial of due process, as an arbitrary interference with the right of mines and carriers to manage their own affairs and control their own property." Nor is the order in excess of the authority which Congress has bestowed on the Commission.

<sup>28</sup> 273 U. S. 299.

<sup>29</sup> 274 U. S. 564.

*d. National Taxation*

The bitter warfare which Florida has been waging upon the inheritance tax provisions of the Revenue Act of 1926<sup>30</sup> was carried to the Supreme Court in the case of *Florida v. Mellon*<sup>31</sup> in an effort to enjoin the enforcement of the law. The constitution of Florida forbids inheritance taxation. In fact, several states showed signs of entering into a sort of competitive bidding to attract wealth into the state by subjecting it either to no death duties or to very low ones. Largely to destroy any such advantages, the federal act provided that the federal tax upon any inheritance might be reduced to the extent of the amount of any state inheritance tax paid, up to eighty per cent of the federal levy. A Florida estate would thus pay the entire tax; while a New York estate would pay a federal tax reduced by all or a large part of the amount of the New York inheritance tax. The Court fails to find any direct injury threatening either the state or the citizens of Florida warranting injunctive relief. The tax in question is laid uniformly throughout the United States, even though the results of its enforcement vary from state to state, because "the rule of liability which it sets up is alike in all parts of the country."

In *Nichols v. Coolidge*<sup>32</sup> it is held that the federal inheritance tax law does not apply to a transfer by deed of real estate made by a grantor to his children before his death, although it is understood that the grantor shall continue to occupy the property but has no agreement which protects him in doing so. This is held to be an absolute transfer. An attempt was made also to include, in the gross value of an estate subject to the inheritance tax, the value of property which had been transferred by the decedent before the passage of the act, not in contemplation of death, but to take effect at or after his death. This is held to be arbitrary and capricious, and consequently a taking of property without due process of law.

Is a bootlegger required under the Income Tax law to make a return and pay a tax upon the profits derived from his illegal business? This question is answered in the affirmative in the case of *United States v. Sullivan*.<sup>33</sup> "We see no reason," said Mr. Justice Holmes, speaking for the Court, "why the fact that a business is unlawful should exempt it from paying the taxes that if lawful it would have to pay." The

<sup>30</sup> Feb. 26, 1926, 44 Stat. at L. 9. •

<sup>31</sup> 273 U. S. 12.

<sup>32</sup> 274 U. S. 531.

<sup>33</sup> 274 U. S. 259.

protection against compulsory self-incrimination in the Fifth Amendment could be set up as a reason for not disclosing on the tax-blank facts of an incriminating nature, but would not justify a refusal to make any return at all. The defendant "could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law."<sup>34</sup>

*e. National Prohibition*

The Volstead Act forbids any one but a physician with a permit to issue a prescription for liquor and restricts the amount of spiritous liquor so prescribed for use by one person within any period of ten days to one pint. No such prescription may be refilled. The validity of this provision was attacked by a distinguished New York physician in the case of *Lambert v. Yellowley*.<sup>35</sup> It was alleged that such a restriction had no real or substantial relation to the appropriate enforcement of the Eighteenth Amendment and was, therefore, in excess of the power delegated to Congress by the amendment, and was in violation of the complainant's fundamental rights protected by the Fifth Amendment. Both contentions were overruled by a five-to-four decision sustaining the provision. The Court concluded that the restriction on medicinal liquor was an "admissible measure for enforcing the prohibition ordained by the Eighteenth Amendment." The right of a physician to practice medicine is always subject to the police power of the states and to the power of Congress to enforce the Eighteenth Amendment. Mr. Justice Sutherland wrote a vigorous dissenting opinion emphasizing the view that this rigorous clause was in excess of any delegated authority in Congress to enforce the prohibition against the sale of liquor for beverage purposes.

In *Murphy v. United States*<sup>36</sup> it was held that an acquittal under a prosecution for maintaining a liquor nuisance does not prevent "padlocking" the premises to abate the nuisance. Mr. Justice Holmes, speaking for the Court, referred to the plausibility of the argument that the "padlocking" order is in effect a second punishment for the same offense. He holds, however, that the purpose of the injunction is preventive and not penal and that the two proceedings are quite

<sup>34</sup> In *Alston v. United States*, 274 U. S. 289, the Harrison Anti-Narcotic Act, as amended, is upheld against the contention that the restrictions imposed on buying and selling narcotics are not relevant to the taxing power.

<sup>35</sup> 272 U. S. 581.

<sup>36</sup> 272 U. S. 630.

separate. "The government may have failed to prove the appellants guilty, and yet may have been and may be able to prove that a nuisance exists in the place."

A sharp tooth has been added to our system of federal prohibition enforcement by the decision in *United States v. One Ford Coupe Automobile*.<sup>37</sup> This holds that an automobile used for carrying contraband liquor may be forfeited to the government under Section 3,450 of the Revised Statutes<sup>38</sup> providing for such forfeiture in cases where taxes have not been paid on liquor so transported. This section does not protect the rights or interests of innocent persons in the vehicle, which may be forfeited even though no one is convicted or even prosecuted for any illegal act. Under Section 26 of the Volstead Act, such forfeiture is permitted only in case of the conviction of some one discovered in the act of transporting liquor in violation of law, and the interests in the vehicle of those who are innocent are preserved. Those guilty of unlawful transportation in this case were never apprehended or prosecuted. The Court holds that contraband liquor is still subject to tax, that the tax is not void as being a mere penalty, that the forfeiture clause in the Volstead Act did not supersede that of the Revenue Act nor so modify it as to protect the interests of innocent owners of vehicles illegally used, and that the remedies of the two acts may be concurrently enforced. Three justices dissented from this decision.

On the other hand, when a conviction is had under the Volstead Act for illegal transportation and the automobile forfeited as required by law, saving the interests of innocent owners, the government can not proceed to forfeit the car under Section 3,450 of the Revised Statutes (not saving the interests of innocent owners), since the Willis-Campbell Act of 1921<sup>39</sup> provides that conviction under one law will bar prosecution under the other. This is the case of *Port Gardner Investment Co. v. United States*.<sup>40</sup>

It is held in *Dodge v. United States*<sup>41</sup> that the seizure, without authority of law, federal or state, by state police officers of a boat used in rum-running, could be adopted by the federal government so as to justify a forfeiture. The boat could lawfully have been seized by federal officers. The owner suffers nothing that he would not have suffered

<sup>37</sup> 272 U. S. 321.

<sup>38</sup> U. S. Code, Title 26, Sec. 1, 181.

<sup>39</sup> Nov. 23, 1921, 42 Stat. at L. 222.

<sup>40</sup> 272 U. S. 564.

<sup>41</sup> 272 U. S. 530.

had the seizure been authorized. Such forfeiture stands on different ground from the exclusion of evidence obtained by illegal search and seizure, as there is no invasion here of personal rights secured by the Constitution.

The authority of coast guard officers to interfere with the operations of rum runners beyond the twelve-mile limit is brought under review in two cases. In *Maul v. United States*<sup>42</sup> an American vessel was seized twenty-four miles from land and her forfeiture sought on the ground that she was engaged in a trade other than that for which she was licensed, and had proceeded on a foreign voyage without giving up her enrollment and license and without being duly registered. The tariff act of 1922<sup>43</sup> specifically authorizes the search of vessels within twelve miles of our coast to discover violations of federal law for which the vessel might be forfeited. It was contended that this act either specifically or impliedly repeals any previous act permitting search and seizure beyond such limit. The Court, however, holds that Section 3,072 of the Revised Statutes,<sup>44</sup> which traces its lineage to the Tariff Act of 1789,<sup>45</sup> supports the seizure in the present case. This section permits customs officers to seize vessels which are liable to seizure "by virtue of any law respecting the revenue, as well without as within their respective districts." This has not been repealed by the act of 1922. The coast guard officers may be regarded as customs officials. The phrase "without their respective districts" gives them authority to act outside the twelve-mile limit. The vessel here taken was liable to seizure under the revenue laws. Thus, as in the *Ford Coupe Case*,<sup>46</sup> an ancient provision to aid the collection of federal taxes is used as a weapon for prohibition enforcement.

In *United States v. Lee*<sup>47</sup> it is held that a motor-boat engaged in rum-running may be seized and searched outside the twelve-mile limit if there is probable cause to believe that it is engaged in violating the revenue laws. Under the rule of the *Maul* case just discussed, the seizure was good, and from the power of the officers to seize "it is fairly to be inferred that they are likewise authorized to board and search such vessels when there is probable cause to believe them subject to seizure. . . ." The search without a warrant was lawful under the rule

<sup>42</sup> 274 U. S. 501.

<sup>43</sup> September 21, 1922, 42 Stat. at L. 858.

<sup>44</sup> U. S. Code, Title 19, Sect. 506.

<sup>45</sup> July 31, 1789, 1 Stat. at L. 29.

<sup>46</sup> *Supra*, note 37.

<sup>47</sup> 274 U. S. 559.



of the Carroll case<sup>48</sup> applicable to the search of vehicles and boats. The government's failure to bring action to forfeit the boat and liquor did not vitiate the seizure or search. The liquor seized was lawfully placed in evidence.<sup>49</sup>

### III. JUDICIAL POWER

Kentucky enacted in 1922 a declaratory judgment statute providing that when "an actual controversy exists" the plaintiffs may seek and obtain a binding "declaration of rights," whether any actual consequential relief is sought or not. A Kentucky statute of 1924 regulates the sale of leaf tobacco at public auctions. In *Liberty Warehouse Co. v. Grannis*<sup>50</sup> the plaintiffs, a Kentucky corporation and a citizen of North Carolina, seek from a federal district court a declaration of their rights under the statute, jurisdiction being invoked on the ground of diverse citizenship. The attorney-general of the state was made a defendant. It was alleged that the statute in question violated the state constitution, the federal commerce clause, the due process and equal protection clauses of the Fourteenth Amendment, and the Sherman Act. The Supreme Court here holds the lower court correct in dismissing the case for want of jurisdiction, since under the facts as stated no "case or controversy" was presented to the court. Federal judicial power "does not extend to the determination of abstract questions or issues framed for the purpose of invoking the advice of the court without real parties or a real case." Authority in point is found in *Muskrat v. United States*.<sup>51</sup> The implications of the case are not wholly clear. State courts have divided sharply on whether rendering a declaratory judgment is a bona fide exercise of judicial power, the weight of authority holding that it is.<sup>52</sup> This case certainly points in the other direction, but it should be noted that the provisions of the declaratory judgment act are here invoked solely to seek what amounts

<sup>48</sup> *Carroll v. United States*, 267 U. S. 132. See comment in this *Review*, vol. 20, p. 87.

<sup>49</sup> In *Ford v. United States*, 273 U. S. 593, there is a somewhat elaborate examination of our treaty of 1925 with Great Britain permitting search and seizure of vessels seeking to smuggle liquor into this country. It is held that the treaty is not violated by the seizure of an English vessel and the arrest of those on it, outside the three-mile limit, for a conspiracy to violate the Prohibition Act laid in a bay within our territorial jurisdiction. Several complex problems incident to the proceeding are discussed in a long opinion.

<sup>50</sup> 273 U. S. 70.

<sup>51</sup> 219 U. S. 346.

<sup>52</sup> The state decisions have been commented upon in this *Review*, vol. 20, p. 587, and vol. 21, p. 581.

to an advisory opinion from the court on questions of constitutional law. Whether the Supreme Court would react in the same way to a demand for a declaration of the adverse rights of private litigants properly argued is not settled.

*United States v. Gettinger*<sup>53</sup> holds that the federal government is not obligated to return a fine collected under an unconstitutional statute (the Lever Act),<sup>54</sup> even though the original defendants in pleas of *noto contendere* waived claims to such fines "except in the event" that the act be held void by the Supreme Court. This did not amount to a contract to return the fine, as "neither the court nor any federal officer had authority to make such an agreement."<sup>55</sup>

#### IV. THE FEDERAL BILL OF RIGHTS

##### *a. The Fourth Amendment—Searches and Seizures*

A federal officer cannot make a lawful search of a person's premises under a warrant invalid under federal law, even though it may comply with state law. Where the federal officer joins a party to make a search under a state warrant in the hope of turning up evidence of federal law breaking, evidence so found not covered by the warrant and not relating to violation of state law can not be admitted in a federal court. It is the presence of the federal officer that vitiates the search, for, the Court adds, "we do not question the right of the federal government to avail itself of evidence improperly seized by state officers operating entirely upon their own account." This is the case of *Byars v. United States*.<sup>56</sup> On the other hand, where a lawful warrant is procured the illegal act of federal agents in destroying liquor on the searched premises does not make their entire action a trespass nor render inadmissible as evidence samples of the liquor discovered. "A criminal prosecution," says Mr. Justice Stone, "is more than a game in which the government may be checkmated and the game lost merely because its officers have not played according to rule." See *McGuire v. United States*.<sup>57</sup>

<sup>53</sup> 272 U. S. 734.

<sup>54</sup> Act of August 10, 1917, 40 Stat. at L. 276, as amended by act of October 22, 1919, 41 Stat. at L. 297.

<sup>55</sup> In *New York v. Illinois*, 274 U. S. 488, it is held that New York may not secure injunctive relief against the diversion by Illinois of water from the Great Lakes on the ground that such diversion will prevent the use by the state of New York and its citizens of the water for power purposes, since no such use is shown nor immediately contemplated, nor has Congress consented to such use.

<sup>56</sup> 273 U. S. 28.

<sup>57</sup> 273 U. S. 95.

*b. Double Jeopardy*

The familiar rule of *United States v. Lanza*<sup>58</sup> and earlier cases, that one is not placed in double jeopardy by being prosecuted by both federal and state governments for the same act, is reiterated in *Hebert v. Louisiana*.<sup>59</sup> Hebert was under federal indictment for manufacturing liquor and was released on bail. He was thereupon arrested and put on trial in the state court for the same act, which also violated the state law. The Court not only rejected the plea of double jeopardy but held, following *Ponzi v. Fessenden*,<sup>60</sup> that the state arrest, in the absence of any federal governmental objection, was not in derogation of federal authority so as to defeat state jurisdiction. The plea of double jeopardy was set up also in *Albrecht v. United States*<sup>61</sup>, where the defendants were convicted separately both of possessing and of selling the same liquor. The Court overrules this objection, declaring "there is nothing in the Constitution which prevents Congress from punishing separately each step leading to the consummation of a transaction which it has power to prohibit, and punishing also the completed transaction."

*c. Due Process of Law*

In *Farrington v. Tokushige*<sup>62</sup> an act of the legislature of Hawaii imposing rigid restrictions upon private foreign-language schools and the teachers thereof was declared invalid for want of due process under the doctrine of *Meyer v. Nebraska*<sup>63</sup> and *Pierce v. The Society of Sisters*.<sup>64</sup> The restrictions included a system of licenses, fees, limitation of hours, prescription of studies and text-books, as well as examination of teachers, who must possess "the ideals of democracy" and pledge themselves to promote Americanism. No adequate reason, in the Court's judgment, is disclosed to justify these regulations. The decision rests on the Fifth Amendment and is, it is believed, the first authoritative application of the due process clause of that amendment to an unincorporated territory. Says the Court: "The inhibition of the Fifth Amendment [due process] applies to the federal government and agencies set up by Congress for the government of the territory." It will be

<sup>58</sup> 260 U. S. 377. See comment in this *Review*, vol. 18, p. 60.

<sup>59</sup> 272 U. S. 312.

<sup>60</sup> 258 U. S. 254. See comment in this *Review*, vol. 16, p. 622.

<sup>61</sup> 273 U. S. 1.

<sup>62</sup> 273 U. S. 284.

<sup>63</sup> 262 U. S. 390. See comment in this *Review*, vol. 18, p. 69.

<sup>64</sup> 268 U. S. 510. See comment in this *Review*, vol. 20, p. 98.

recalled that in *Yu Cong Eng v. Trinidad*,<sup>65</sup> the Chinese Bookkeeping Act passed by the Philippine legislature was held void, not under the Fifth Amendment, but under the due process and equal protection clauses which Congress had incorporated into the organic law of the territory.

Two cases<sup>66</sup> raise questions of due process of law in proceedings for the deportation of aliens, but those questions are neither new nor striking. It is held in *Jones v. Prairie Oil and Gas Company*<sup>67</sup> that there is no denial of due process in allowing an infant's guardian to lease the infant's homestead, which may not be alienated for a term extending beyond his majority.

#### V. STATUTORY CONSTRUCTION—MISCELLANEOUS

##### *a. The Anti-Trust Acts*

The prohibitions of the Sherman Act<sup>68</sup> and the Wilson Tariff Act<sup>69</sup> as amended are violated by contracts, combinations, and conspiracies entered into by parties in the United States which resulted in the control of the importation and sale of sisal (from which binder twine is made) and a complete monopoly of interstate and foreign commerce in that product. This is held in *United States v. Sisal Sales Corporation*.<sup>70</sup> As long as the unlawful conspiracies took place in this country it does not matter that the acts which were the objects of the conspiracy—in this case the securing of discriminatory legislation by foreign governments—transpired elsewhere. This distinguishes the case from *American Banana Co. v. United Fruit Co.*,<sup>71</sup> where the unlawful acts and conspiracies all took place outside the jurisdiction of the United States.

In *United States v. Brims*<sup>72</sup> the criminal sections of the Sherman Act were held applicable to an agreement which had been entered into between manufacturers of millwork in Chicago, contractors purchasing and using such millwork, and representatives of the carpenters' unions.

<sup>65</sup> 271 U. S. 500. See comment in this *Review*, vol. 21, p. 81.

<sup>66</sup> *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U. S. 102; *Quon Quon Poy v. Johnson*, 273 U. S. 352.

<sup>67</sup> 273 U. S. 195.

<sup>68</sup> July 2, 1890, 26 Stat. at L. 209.

<sup>69</sup> August 27, 1894, 28 Stat. at L. 509, as amended by act of February 12, 1913, 37 Stat. at L. 667.

<sup>70</sup> 274 U. S. 268.

<sup>71</sup> 213 U. S. 347.

<sup>72</sup> 272 U. S. 549.

Under the agreement the manufacturers and contractors would employ only union carpenters who, in turn, would refuse to install non-union-made millwork. This would eliminate the competition of outside non-union mills which were paying lower wages and underselling the Chicago mills and was clearly a direct and material restraint upon interstate commerce.

In *Bedford Cut Stone Co. v. Journeymen Stone-Cutters' Association*<sup>73</sup> the doctrine of the case just mentioned is pushed even farther and an injunction is sustained against a rule of the stone-cutters' national union forbidding members to handle "unfair" stone, i.e., stone upon which non-union men had worked. This was held to involve an unlawful restraint of interstate commerce in stone, which was not condoned by the fact that the primary object of the rule was to unionize the cutters and carvers of stone and strengthen and protect their interests. This follows the rule in *Duplex Printing Press Co. v. Deering*.<sup>74</sup> Justices Holmes and Brandeis dissented.

*Anderson v. Ship-owners Association*<sup>75</sup> holds that injunctive relief under the Sherman Act may be invoked against an Association of Pacific Coast American Ship-owners which agrees amongst its members to employ seamen only in accordance with the strict rules of the association. These rules, comprising registry, wage fixing, and a system of assignment of men to jobs in the order of application, made impossible an individual bargain of employment between a seaman and a ship-owner. Ships and those who operate them are instrumentalities of commerce, and these restrictive rules are a direct and primary interference with the freedom of that commerce.

#### *b. Discrimination Against National Banks*

Congress has allowed the states to tax the shares in national banks subject to the restriction that "the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state."<sup>76</sup> It has previously been held that "other moneyed capital" means "only that which is employed in such way as to bring it into substantial competition with the business of national banks."<sup>77</sup> In *First National Bank v. Hartford*<sup>78</sup> a Wisconsin

<sup>73</sup> 273 U. S. 677.

<sup>74</sup> 254 U. S. 443.

<sup>75</sup> 272 U. S. 359.

<sup>76</sup> U. S. Code, Title 12, Section 548.

<sup>77</sup> *First National Bank v. Anderson*, 269 U. S. 341.

statute placing an ad valorem tax on all shares of banks, "including national banking associations," but exempting moneyed capital in the hands of individual citizens, was held to violate the federal restriction. This is on the ground that such capital, when used in the business of making loans or selling credits, is placed in competition with the capital of national banks. A similar result is reached in *Minnesota v. First National Bank*<sup>79</sup> with reference to a somewhat analogous situation arising under a statute of that state.

*c. Cancellation of Oil Lease*

In *Pan American Petroleum and Transportation Co. v. United States*<sup>80</sup> the Supreme Court sustained the cancelling of the notorious leases of oil lands in California made to Mr. Doheny by Secretary Fall in 1920. Reviewing the legislation dealing with the status of these lands and all phases of the transactions culminating in the leases mentioned, the Court finds that the leases were not authorized by any act of Congress and that "the whole transaction was tainted with corruption." It is "not necessary to show that the money transaction between Doheny and Fall constituted bribery as defined in the Criminal Code . . . . It is enough that these companies sought and corruptly obtained Fall's dominating influence in furtherance of the venture. It is clear that, at the instance of Doheny, Fall so favored the making of these contracts and leases that it was impossible for him loyally or faithfully to serve the interests of the United States." Furthermore, the Court held, that all structures, fuel delivered, and various improvements on the lands in question become the property of the United States without reimbursement to the Doheny interests.

## B. QUESTIONS OF STATE POWER

### I. THE FOURTEENTH AMENDMENT

*a. Equal Protection of the Law*

A Texas statute of 1923 relating to primary elections provided: "In no event shall a negro be eligible to participate in a Democratic party primary election held in the state of Texas, and should a negro vote in a Democratic primary election, such ballot shall be void and election officials are herein directed to throw out such ballot, and not count

<sup>78</sup> 273 U. S. 548.

<sup>79</sup> 273 U. S. 561.

<sup>80</sup> 273 U. S. 456.

the same." In *Nixon v. Herndon*,<sup>81</sup> a damage action brought by a negro barred from voting in a primary, this is held unconstitutional as a denial of the equal protection of the law. Says Mr. Justice Holmes: "The states may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case." The plaintiff had alleged violation of the Fifteenth Amendment as well as the Fourteenth, but the Court said: "We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth." In the case of *Chandler v. Neff*<sup>82</sup> a federal district court in Texas had considered the validity of this law under the Fifteenth Amendment and had sustained it on the doctrine of the *Newberry* case<sup>83</sup> that federal control over elections does not extend to primaries and that states could, therefore, regulate such primaries as they pleased. Considerable speculation had been rife as to whether the Supreme Court could invalidate the Texas statute under the Fifteenth Amendment without reversing or weakening the questionable rule laid down in the *Newberry* decision. By resting its decision exclusively on the Fourteenth Amendment, the Court side-steps this issue.

An alien is not denied the equal protection of the laws by a municipal ordinance which excludes him, because he is not a citizen, from operating a pool-room. This is not an irrational discrimination, nor does it violate the clause of the treaty with Great Britain securing "reciprocal liberty of commerce." The owner of a place of amusement is not engaged in commerce. This is the case of *Ohio ex. rel. Clarke v. Deckelbach*<sup>84</sup>.

In *Power Mfg. Co. v. Saunders*<sup>85</sup> the equal protection of the laws is held to be denied by an Arkansas statute under which a foreign corporation lawfully doing business in the state may be sued in any county, whether it maintains a place of business or agent there or not, while a domestic corporation may be sued only where it actually does business or where its chief officer resides. This is deemed arbitrary discrimination and, following a well established doctrine, the license which defines the foreign corporation's rights in the state does not obligate it to submit

<sup>81</sup> 273 U. S. 536.

<sup>82</sup> 298 Fed. 515.

<sup>83</sup> *Newberry v. United States*, 256 U. S. 232.

<sup>84</sup> 274 U. S. 392.

<sup>85</sup> 274 U. S. 490.

to unconstitutional state regulations. Justices Holmes and Brandeis dissent on the ground that the inequality involved was not wholly unreasonable and was the subject of contract between the corporation and the state.

*b. Due Process of Law*

*1. The Police Power*

The cases at the 1926 term involving the application of the test of due process of law to state police legislation are of more than usual intrinsic importance. At the same time, the opinions filed by both majority and dissenting justices show the Court to be as far as ever from any common intellectual approach to these vital problems.

A decision of genuinely social significance is that in *Buck v. Bell*<sup>86</sup> holding constitutional the sterilization of mental defectives confined in public institutions. The Virginia act of 1924, which was attacked, had carefully safeguarded procedural rights of those subject to the law so that no want of due process was made out on that score. The substance of the law itself is upheld as a reasonable social protection, entirely compatible with due process of law. Mr. Justice Holmes' trenchant statement of this warrants quotation. "We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the state for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes . . . . Three generations of imbeciles are enough." Nor is there unreasonable discrimination in applying the law to inmates of institutions and not to defectives outside.<sup>87</sup>

By a five-to-four decision, the Court holds unconstitutional the New York statute of 1922 declaring the price of theatre tickets to be a matter affected with a public interest and forbidding under penalty the resale of any such ticket at more than fifty cents over the price printed on its face. This is the case of *Tyson and Bro. v. Banton*.<sup>88</sup>

<sup>86</sup> 274 U. S. 200.

<sup>87</sup> The state decisions on this question are commented on in this *Review*, vol. 20, p. 600.

<sup>88</sup> 273 U. S. 418.



The majority, speaking through Mr. Justice Sutherland, conclude that theaters are not businesses affected with a public interest and that governmental control of their prices is a denial of due process. This conclusion is supported by an elaborate survey of precedents in the matter of price regulation from which the following deduction is made: "Each of the decisions of this Court upholding governmental price regulation, aside from cases involving legislation to tide over temporary emergencies [such as rent control during the war], has turned upon the existence of conditions, peculiar to the business under consideration, which bore such a substantial and definite relation to public interest as to justify an indulgence of the legal fiction of a grant by the owner to the public of an interest in the use." A theater does not fall in this category and the public's interest in it is essentially like that in a grocery or apartment house. The Court admits that theaters may be regulated to protect public morals; but they are not subject to the requirement of equal service to all who apply, nor to a regulation of their charges. Judgment is reserved on the interesting question whether, under this conception of its status, a theater could discriminate amongst its patrons on grounds of race, color, or creed. The essential ground of the dissents of Justices Holmes, Stone, and Brandeis is their protest against too strict and conventional an application of the concept, "business affected with a public interest." Says Mr. Justice Stone: "It is difficult to use the phrase free of its connotation of legal consequences, and hence, when used as the basis of a judicial decision, to avoid begging the question to be decided." In his judgment, the cases supporting price-regulation show that the common element "is the existence of a situation or a combination of circumstances materially restricting the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that serious economic consequences result to a very large number of members of the community." It makes no difference that the business regulated is "less essential to life than some others." Theaters fall within the rule as stated. Mr. Justice Sanford dissented on the ground that the business of a theater-ticket broker was affected with a public interest, regardless of the legal status of the business of the theater itself.<sup>89</sup>

<sup>89</sup>Mr. Justice Holmes says in his dissent: "I think. . . . that the notion that a business is clothed with a public interest and has been devoted to the public use is little more than a fiction intended to beautify what is disagreeable to the sufferers. The truth seems to me to be that, subject to compensation when compensation is due, the legislature may forbid any business when it has a sufficient force of public

Two cases of importance to the progress of city planning and municipal improvement were decided at this term. The most significant of these is *Euclid v. Ambler Realty Co.*,<sup>90</sup> upholding a zoning ordinance for the protection of residential districts. The ordinance divides the village of Euclid, outside of Cleveland, into six classes of districts according to the use made of the land or buildings, three classes of height districts, and four classes of area districts. Only the use districts were under attack in this case. The first use districts are restricted to single family dwellings, parks, and one or two other unobjectionable purposes. The second class is extended to include two-family dwellings; the third permits apartment houses, hotels, churches, schools, etc. Manufacturing and industrial operations, in general, are kept out of the first five zones. Most of the Ambler Realty Company's property fell in the second and third zones, and some in the sixth. It had been held for industrial purposes, and, so used, would bring about \$10,000 per acre. If restricted to residential purposes, it is worth not over \$2,500 per acre. The zoning restrictions are alleged, therefore, to deprive the company of property without due process of law. The opinion of Mr. Justice Sutherland embodies a most liberal attitude toward the state's police power. In fact, it is hard to realize that he is the same justice who wrote the majority opinions in *Tyson and Bro. v. Banton*<sup>91</sup> and the *Minimum Wage Case*.<sup>92</sup> He emphasizes that while constitutional guaranties do not change in meaning, the scope of their application "must expand or contract to meet new and different conditions." What constitutes a nuisance cannot be settled by abstract rules of law. "A nuisance may be merely a right thing in the wrong place—like a pig in the parlor instead of the barnyard." Further, "if the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." Little argument is

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opinion behind it. . . . But if we are to yield to fashionable conventions, it seems to me that theatres are as much devoted to public use as anything can well be. We have not that respect for art that is one of the glories of France. But to many people the superfluous is the necessary, and it seems to me that government does not go beyond its sphere in attempting to make life livable for them. I am far from saying that I think this particular law a wise and rational provision. That is not my affair. But if the people of the state of New York speaking by their authorized voice say that they want it I see nothing in the Constitution of the United States to prevent their having their will."

<sup>90</sup> 272 U. S. 365.

<sup>91</sup> *Supra*, note 88.

<sup>92</sup> *Adkins v. Children's Hospital*, 261 U. S. 525.

devoted to the exclusion of all industrial establishments from the restricted areas. This is a reasonable extension of principles now well established and is not vitiated by the fact that some unobjectionable industries are placed under the ban. The main issue in the case arises over the exclusion from residential zones of apartment houses, hotels, and stores. The Court is obviously impressed with the weight of authority in the state courts sustaining such restrictions, and sets forth at some length the justifying arguments embodied in the state opinions. The considerations supporting the exclusion of business houses and stores are: more effective police protection, less danger from loiterers and criminals, economy in street-paving due to lighter traffic, elimination of noise, disturbance, odors, vermin, etc. The apartment house is a potential nuisance since it is "often a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district." Furthermore, it cuts off free circulation of air, monopolizes sunshine, brings increased traffic and business which results in disturbing noises, and causes the "occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play." These considerations make it impossible to say that the restrictions are arbitrary and have no relation to public health, safety, morals, or general welfare. Justices Van Devanter, McReynolds, and Butler dissent.

The case of *Gorieb v. Fox*<sup>93</sup> upholds the validity of an ordinance establishing a building line, or setback, on streets in residential districts. This was an ordinance of 1924 of Roanoke, Virginia, providing that in such districts buildings subsequently erected must be kept back to a line at least as far from the street as that occupied by sixty per cent of the existing houses in the block (on the same side of the street). The city council may make exceptions to the rule. The plaintiff wished to erect a brick store building on the street line and was required to keep it back about thirty-four feet. The Court rejects the various grounds on which he attacks the validity of the ordinance. The sixty per cent rule is not too vague to be a workable standard. The power of the council to make exceptions to the operation of the ordinance may not be pleaded until that power is abused. The ordinance does not deprive land-owners of property without due process of law. The general theory of the *Euclid* case is relied upon here, and the ordinance is found to bear a reasonable relationship to public health, safety, and

<sup>93</sup> 274 U. S. 603.

welfare. It reduces fire hazards by preventing building congestion; it prevents cutting off light and air; by keeping the view of street corners unobstructed, it reduces the danger of motor accidents. The case is distinguished from that of *Eubank v. Richmond*<sup>94</sup> decided in 1912 on the ground that the Richmond ordinance required the establishment of a building line upon the request of the owners of two-thirds of the abutting property—a scheme involving a delegation of legislative power to private individuals.

The right of a state to require the possession of a diploma from a dental college in good standing as a prerequisite to being examined for a license to practice dentistry is held in *Graves v. Minnesota*<sup>95</sup> not to be so arbitrary and unreasonable a requirement as to amount to a denial of due process or equal protection of the law. Nor (*Hayman v. Galveston*)<sup>96</sup> can the same objections prevail against a rule promulgated by the governing board of a public hospital excluding osteopathic physicians from practicing therein. It can not be said that all licensed physicians have a constitutional right to practice in a hospital maintained by public funds, and the discrimination against osteopaths is not arbitrary or unreasonable on its face. There was no restriction on the general right to practice.

Two state statutes aimed at monopoly and unfair trade practices fell under the ban of the Fourteenth Amendment. In *Fairmont Creamery Co. v. Minnesota*,<sup>97</sup> the Court, speaking through Mr. Justice Butler, held unconstitutional a statute which forbade creameries to buy cream at higher prices in one place than in another, barring the difference in the cost of transportation. This is held an arbitrary infringement of liberty of contract. Granting that an evil results from the high bidding of strong buyers, the prohibition here set up bears no reasonable relation to that evil but penalizes legitimate business transactions. In *Cline v. Frink Dairy Co.*,<sup>98</sup> the Colorado anti-trust law was held void for want of certainty under the doctrine of the *Cohen Grocery Co. case*<sup>99</sup> and *Connally v. General Construction Co.*<sup>100</sup> The act forbade conspiracies or combinations to do five definite enough things set forth in

<sup>94</sup> 226 U. S. 137.

<sup>95</sup> 272 U. S. 425.

<sup>96</sup> 273 U. S. 414.

<sup>97</sup> 274 U. S. 1.

<sup>98</sup> 274 U. S. 445.

<sup>99</sup> *United States v. Cohen Grocery Co.*, 255 U. S. 81.

<sup>100</sup> *Connally v. General Construction Co.* 269, U. S. 385. See comment in this *Review*, vol. 21, p. 86.

detail. It then added two provisos as follows: "no agreement or association shall be deemed to be unlawful . . . the object and purposes of which are to conduct operations at a reasonable profit or to market at reasonable profit those products which can not otherwise be so marketed: . . . it shall not be deemed to be unlawful . . . for persons, etc. . . . selling or manufacturing commodities of a similar or like character to employ, form, organize . . . any association, firm or corporation having as its object or purpose the transportation, marketing or delivering of such commodities. . . ." In an opinion written by Chief Justice Taft these exceptions are declared to "leave the whole statute without a fixed standard of guilt in an adjudication affecting the liberty of one accused." Due process of law requires a state "to frame its criminal statutes so that those to whom they are addressed may know what standard of conduct is intended to be required."

The Kansas Court of Industrial Relations Act of 1920, although pretty thoroughly emasculated by previous decisions, is not entirely toothless. *Dorchy v. Kansas*<sup>101</sup> sustains *Dorchy's* conviction under the section of the act making it a felony for a labor union officer wilfully to use the influence of his office to induce another to violate the act. The act, while reserving the right of the individual employee to quit work, forbids conspiracies to induce others to quit work for the purpose of hindering, delaying, limiting, or suspending the operation of mining. *Dorchy*, as an officer of the miners' local, ordered a strike to compel the company to pay a claim of \$180 to a former workman based on certain disputed facts as to the man's age and consequent rate of pay. The strike was called in violation of an injunction of the state court. The broad question of the right of the state to prohibit strikes is not raised, but merely the question whether the application of this law to the facts of this case works a denial of due process. The Court holds that it does not. A strike to enforce the payment of such a claim as this one is coercion, and may be punished criminally as extortion or otherwise, as may be the act of the union officer in ordering such an unlawful strike. The case throws light upon a phase of the problem of partial unconstitutionality of statutes. In *Wolff Packing Co. v. Court of Industrial Relations*<sup>102</sup> the Court held void the scheme of compulsory arbitration provided by the act under which an order regulating hours of labor had issued. The question was raised, when a writ

<sup>101</sup> 272 U. S. 306.

<sup>102</sup> 267 U. S. 552.

of error in the present case came before the Court in 1924,<sup>103</sup> whether the clause under which Dorchy was being prosecuted was separable from the invalid provisions requiring compulsory arbitration. This question was not passed on by the Supreme Court but was sent back to the supreme court of Kansas for decision. That tribunal held the sections were separable<sup>104</sup> and the Court now holds itself bound by that decision.

In *Pizitz Dry Goods Co. v. Yeldell*<sup>105</sup> a statute which allows punitive damages to be assessed against an employer for the mere negligence of an employee which results in death is held not to deny due process of law. It involves an extension of the doctrine of liability without fault, but for recognized considerations of public policy. As Mr. Justice Stone puts it: "We can not say that it is beyond the power of a legislature . . . to attempt to preserve human life by making homicide expensive."

The Court decided three cases involving the validity of state syndicalism laws. Of these, *Whitney v. California*<sup>106</sup> is the most conspicuous, due to the fact that the defendant was a highly respected social worker. She had been convicted under the provision of the California Criminal Syndicalism Act making it a felony to assist in organizing, or to become a member of, any society or group organized to teach or aid criminal syndicalism, which is elaborately defined. Miss Whitney had joined the California branch of the Communist Labor party and was active in its counsels. She denied all intention, in joining the organization, to violate any law or indulge in terrorism or violence, although the party in its program advocates political strikes and the proletariat revolution. On the pleadings the Supreme Court found itself confined to a consideration of the validity of the statute. This it found free from objection on the grounds of due process, or equal protection of the law. It is not an arbitrary exercise of the police power of the state. In a concurring opinion Mr. Justice Brandeis reiterates his view that restrictions on the right of utterance or assembly are not valid unless there is a clear and present danger of some evil which the state may constitutionally seek to prevent. He protests against the idea in the opinion of the Court that "assembling with a political party, formed to advocate the desirability of a proletarian revolution by mass action

<sup>103</sup> *Dorchy v. Kansas*, 264 U. S. 286.

<sup>104</sup> *State v. Howatt*, 116 Kans. 412.

<sup>105</sup> 274 U. S. 112.

<sup>106</sup> 274 U. S. 357.

at some date necessarily far in the future, is not a right within the protection of the Fourteenth Amendment." He felt, however, that in this case a clear and present danger existed in the activities of the I. W. W. which the Communist Labor party was committed to support. The defendant, since the decision in the case, has been pardoned by the governor of California.

The Criminal Syndicalism Act of Kansas, in terms much like that of California, was made the basis in *Fiske v. Kansas*<sup>107</sup> of the conviction of one who sought to persuade people to become members of a branch of the Industrial Workers of the World, which teaches "that the working class and the employing class have nothing in common . . . and between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system." There was no allegation that the organization advocated violence or crime. The state law as applied in this case is an arbitrary and unreasonable exercise of the police power amounting to a denial of liberty without due process of law.

In *Burns v. United States*<sup>108</sup> the Court approves the definition of the term "sabotage," the advocacy of which is forbidden by the California Criminal Syndicalism Act, to include slowing down on the job or the scamping of work in a deliberate attempt to reduce profits. The defendant had urged workmen loading poles upon ships to do it in such a manner that they would need to be reloaded, thereby increasing the amount of labor. The conviction here was for an offense committed in Yosemite National Park under a federal statute making California laws applicable there to punish offenses not prohibited by a law of the United States.

## 2. *State Taxation*

Under a plan devised by the makers and sellers of Chrysler motor cars every purchaser received insurance against fire and theft, whether he wished it or not, as part of his bargain. The insurance was placed by the Chrysler concern through certain insurance companies to whom the Chrysler corporation paid the premiums. The laws of Ohio forbid the insurance of property in the state except by a legalized agent and tax the business lawfully done there. The insurance on Chrysler cars sold in Ohio was placed by a South Carolina company. Ohio sought

<sup>107</sup> 274 U. S. 380.

<sup>108</sup> 274 U. S. 328.

to revoke the company's license to do business, on the ground of violation of the law. In *Palmetto Fire Ins. Co. v. Conn.*<sup>109</sup> it was held that the South Carolina company was doing business in Ohio when it thus insured cars, even though the contract was made under the laws of another state by parties both of whom were outside the state. "The substance is that by acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist." The transaction was therefore subject to tax in Ohio for the non-payment of which the company could be ousted without violation of due process.

The well established rule that a state cannot, consistently with due process, exact as a condition of a corporation's right to do business within its limits that its rights secured by the federal Constitution may be infringed, is applied in *Hanover Fire Ins. Co. v. Carr*<sup>110</sup> to invalidate an Illinois law which requires foreign insurance companies to pay a tax on their net receipts from all their insurance business, a tax which domestic companies do not pay. The view of the Illinois court that the tax should be deemed a condition precedent to permission to do business in the state is rejected.<sup>111</sup>

### 3. *Regulation of Public Utilities*

In *McCardle v. Indianapolis Water Co.*<sup>112</sup> the Court passed upon a valuation of the property of the water company made by the state public service commission of Indiana and revised by the state court and used as a base for rate-making. The valuation was held too low and the rates accordingly confiscatory. Speaking through Mr. Justice Butler, the Court stated that in fixing present value consideration must be given not only to present prices and wages in computing reproduction costs, but also to future price and wage levels. On this basis the price level representing the average for ten years ending in 1921 was too low because it did not include the high prices and wages of 1922 and 1923, since which time the subsequent trend has been upward and not downward. The company was also entitled to have included the value of certain water rights which it had developed; and the Court further found the commission's estimate of the "going concern value" too low.

<sup>109</sup> 272 U. S. 295.

<sup>110</sup> 272 U. S. 494.

<sup>111</sup> *Wachovia Bank & T. Co. v. Doughton*, 272 U. S. 567, invalidates a state law as being an extraterritorial exercise of the power of taxation. *Road Improvement District No. 1 v. Mo. Pac. R. Co.*, 274 U. S. 188, and *Kadow v. Paul*, 274 U. S. 175, involve questions of due process in special assessments.

<sup>112</sup> 272 U. S. 400.



Mr. Justice Brandeis dissented on the ground that "spot reproduction cost," relied upon by the Court, is not a safe basis of valuation. "The search for value can hardly be aided by a hypothetical estimate of the cost of replacing the plant at a particular moment, when actual reproduction would require a period that must be measured by years."

#### 4. *Civil and Criminal Procedure*

In a case of considerable significance, *Tumey v. Ohio*,<sup>113</sup> the Court held that an accused person is deprived of due process of law by being subjected as to liberty or property to the judgment of a court, the judge of which has a pecuniary interest in seeing the defendant convicted inasmuch as he receives a share of the fine imposed. Under Ohio statutes the mayor of every village has jurisdiction of misdemeanors committed anywhere in the county. This accounts for the fact that the defendant here is being tried before the mayor of North College Hill for the unlawful possession of liquor at White Oak, another village in the same county. Under the ordinances of North College Hill half of the village's share of the fines collected under the state prohibition law is variously allocated so as to increase the efficiency of prohibition law enforcement. Marshalls, prosecuting attorneys, and secret service agents get fixed percentages of such fines, and the mayor, besides his salary, gets the amount of his costs in case the defendant is convicted, but nothing in the way of fees or costs in case of acquittal. In some seven months the treasury of the village had been enriched nearly \$5,000 from fines collected, while the mayor in whose court the defendant Tumey was convicted had received \$696.35 in fees and costs from liquor cases in addition to his regular salary. The conviction of Tumey himself had netted the mayor \$12 and the village \$50. It was further shown that some local division of opinion had existed in the village as to whether the "liquor court" should be continued and the mayor had declared that he would carry it on if the village finances required it, otherwise not. In an able opinion Chief Justice Taft reviews both English and American precedents, and reaches the conclusion that "a system by which an inferior judge is paid for his services only when he convicts the defendant has not become so embedded by custom in the general practice either at common law or in this country that it can be regarded as due process of law unless the costs usually imposed are so small that they may be properly ignored as within the maxim *de minimis non curat lex*." The interest of the mayor here, amounting to about

<sup>113</sup> 273 U. S. 510.

\$100 a month, is not remote or insignificant. And "every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused, denies the latter due process of law." Not only does the mayor have a personal pecuniary interest but he also has an official responsibility for the financial condition of the village which would tend to influence him to the detriment of the accused. Several minor objections to the ordinance are swept aside by the Court.

A state may without denial of due process forfeit an automobile used in violating the prohibition law, even when the owner had no knowledge that the one to whom he entrusted it intended to put it to unlawful use. There is nothing new in visiting "upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it." It is no objection to the validity of the act that its scope is broader than the forfeiture section of the Volstead Act, which protects the interests of innocent owners. This is the case of *Van Oster v. Kansas*.<sup>114</sup>

*Kelley v. Oregon*<sup>115</sup> reaches the obvious result that a prisoner serving a twenty-year sentence is not deprived of due process by being sentenced to death for a murder committed in an attempt to break jail. The suggestion that he has a constitutional right to serve his twenty years before being hanged is ridiculous. The Court cites with approval the lower court decisions answering the same question in the *Gerald Chapman* case.

A Massachusetts act of 1923 provides that when a non-resident drives a motor car upon the highways of the state he thereby appoints the state registrar of vehicles as his agent upon whom process may be served in proceedings arising out of a collision or accident on the highway. He must actually receive and must receipt for notice of the service and a copy of the process. He is allowed time and opportunity to make his defense. In *Kane v. New Jersey*<sup>116</sup> it was held that a state could require a non-resident to appoint one of its officials as his agent for the service of process before allowing him to drive a car on its roads. This act, it is held in *Hess v. Pawloski*,<sup>117</sup> goes but a step further in making the use of the highway equivalent to such appointment of an

<sup>114</sup> 272 U. S. 465.

<sup>115</sup> 273 U. S. 584.

<sup>116</sup> 242 U. S. 160.

<sup>117</sup> 274 U. S. 352.

agent, and the difference is not sufficient to amount to want of due process.

## II. STATE POLICE POWER AND INTERSTATE COMMERCE

To determine when a statute passed in the exercise of the state's police power creates or permits an unconstitutional interference with interstate commerce is a problem of difficulty and importance which continues to engage the attention of the Court. During the 1926 term four state police regulations so attacked were held valid and four others invalid. These decisions in general show the Court to be leaning toward a strict and vigorous protection of the federal interests involved.

*Napier v. Atlantic Coast Line R. Co.*<sup>118</sup> involved the validity of a Georgia statute prescribing an automatic fire door on locomotives in the state. Merged with the *Napier* case were two cases attacking the Wisconsin act prescribing a cab curtain for locomotives. Both statutes were clearly good unless, as applied to locomotives in interstate commerce, they violated the commerce clause. It was further admitted that they did not violate that clause unless Congress had positively occupied the field of legislation in which they fell. Congress has not passed any laws affecting locomotive fire doors or cab curtains. It has, however, by subsequent amendments to the Boiler Inspection Act,<sup>119</sup> shown its intention to occupy the whole field of locomotive equipment regulation, since in that legislation it forbade the use of locomotives in interstate commerce which are not thoroughly safe and empowered the Interstate Commerce Commission to promulgate rules to make them so. This the Commission has done, but it has made no rules regarding fire doors or cab curtains. The state acts are nevertheless void because Congress by its grant of power to the Commission has occupied the entire field so that "requirements by the states are precluded, however commendable or however different their purpose." This is the same strict rule which was applied at the preceding term in the *Washington alfalfa quarantine* case commented on in this *Review*.<sup>120</sup> It would seem to the writer that a sounder rule would be to sustain these state regulations unless they can be shown to clash with positive federal legislation or administrative rules, rather than to hold them in conflict with a broad grant of authority which, through indifference or ignorance of

<sup>118</sup> 272 U. S. 605.

<sup>119</sup> Act of February 17, 1911, 36 Stat. at. L. 913.

<sup>120</sup> *Oregon-Washington R. & Navigation Co. v. Washington*, 270 U. S. 87. See this *Review*, vol. 21, p. 92.

local conditions, may never be exercised. No serious consequences could result from this more lenient rule, since the remedy for any actual state obstruction of federal rules is so obvious and easy.

By a six-to-three decision, the Court invalidated a Pennsylvania statute of 1921 requiring persons selling steamship tickets and orders for passage between the United States and Europe to secure licenses, file proof of character, file bond to account for moneys received, and refrain from fraud and misrepresentation. This is the case of *Di Santo v. Pennsylvania*.<sup>121</sup> The majority held that the soliciting of passengers and the sale of steamship tickets are a recognized part of foreign commerce, and that the requirements of the statute constitute a direct burden on that commerce. The dissenting justices contend that the transaction regulated (the sale of the ticket) is intrastate, and that foreign commerce is not burdened by the requirements of the act.

*Public Utilities Commission v. Attleboro Steam & Electric Co.*<sup>122</sup> holds that the transmission of electric current across a state line is interstate commerce although the title and control of the current passes from buyer to seller at the state line. Here a Rhode Island corporation generated electric current in Providence, which it sold to the defendant, a Massachusetts concern selling electric current for public and private use. Title to the current passed at the state line. The price was fixed by contract in 1917 at a point which had come to be too low. The Rhode Island Public Service Commission attempted to establish a new and higher rate to supersede the contract rate. This it is held to have no power to do, since such an order is a burden on interstate commerce.

While it is admitted that, in the absence of federal legislation on the subject, ferries operated across boundary waters between states may be regulated by state law as to rates and in respect to the safety and convenience of the business, such ferries are still instruments of interstate commerce and no state may forbid their operation without a license. This is held in *Vidalia v. McNeely*.<sup>123</sup> The same rule was applied earlier to a ferry between Michigan and Ontario. The state's power to regulate does not include the power to license or prohibit.

A Massachusetts statute requiring those engaged in interstate bus transportation to secure a license before engaging in intrastate business is not a burden on interstate commerce nor a denial of due process of law. The law does not extend to any business exclusively interstate,

<sup>121</sup> 273 U. S. 34.

<sup>122</sup> 273 U. S. 83.

<sup>123</sup> 274 U. S. 676.

and the complainant, who has not even applied for a license under the law, does not show how the enforcement of the act would operate to prejudice the interstate carriage of passengers. This is the case of *Interstate Busses Corp. v. Holyoke Street Ry. Co.*<sup>124</sup> In *Morris v. Duby*<sup>125</sup> it is held that in the absence of federal legislation a state may rightfully limit the weight of loads passing over its highways both in interstate and local commerce. Such regulations promote both safety and economy and constitute no burden on interstate commerce. An Oregon statute limited such loads to 16,500, a reduction from a previous limit of 22,000, pounds. No contract can be implied to continue the higher limit, nor does the fact that a trucking company may not make a profit unless it can carry the heavier load make the statute discriminatory or unreasonable. In *Stewart & Co. v. Rivari*<sup>126</sup> the New York conditional sales act is held to be applicable to the sale of a tug-boat used in interstate commerce and not to be invalid as an interference with such commerce.

### III. STATE TAXATION AFFECTING FEDERAL INTERESTS

In *Clark v. Poor*<sup>127</sup> it is definitely settled that a state may impose upon those who use its highways, even when they are engaged exclusively in interstate commerce, a tax to help cover the cost and upkeep of the roads. The tax here did not discriminate against interstate commerce, nor was it so high as to amount to a burden on such commerce. A Kentucky tax of one per cent upon the market value of all oil produced in the state is held in *Swiss Oil Corp. v. Shanks*<sup>128</sup> to be an occupation or license tax. Thus construed, it is not a tax on interstate shipments of oil and therefore a burden on interstate commerce. It may validly be imposed in addition to ad valorem taxes on oil-producing property, even though producers of other commodities are not so taxed, since such classification is not arbitrary, amounting to a denial of equal protection of the law, and since the Fourteenth Amendment does not forbid double taxation.

*Southern Railway Co. v. Kentucky*<sup>129</sup> held invalid a state tax levied upon the franchise to operate a small portion of the Southern Railway

<sup>124</sup> 273 U. S. 45.

<sup>125</sup> 274 U. S. 135.

<sup>126</sup> 274 U. S. 614.

<sup>127</sup> 274 U. S. 554.

<sup>128</sup> 273 U. S. 407.

<sup>129</sup> 274 U. S. 76.

Company's system lying in Kentucky. The tax was on intangible property and was computed by capitalizing the net income from the entire system and assigning to Kentucky the proportion of that amount corresponding to the mileage located in the state and then deducting the assessed value of tangible property otherwise taxed. The Kentucky branch had been losing money for five years; therefore to attribute to it values based on earnings of the entire system is arbitrary and amounts to taxation of property outside the state. The mileage basis of valuing railroad franchises may be employed only when the results are not arbitrarily excessive.

In *Miller v. Milwaukee*<sup>130</sup> an attempt of the state to reach the income from federal bonds by a somewhat indirect method was defeated. A Wisconsin corporation owned United States bonds the income from which was paid to stockholders as dividends. The corporations paid a tax to the state upon their income minus that from these bonds. The Wisconsin law provides that stockholders shall not pay an income tax upon dividends from corporations the income from which has been taxed, but that if only part of the corporate income is taxed only a corresponding part of the dividends should be deducted from the income taxed to the stockholder. This the Court holds to be an intentional effort to make up from the stockholder what the state could not take, under the federal Constitution, from the corporation.

#### IV. STATE AND FEDERAL RELATIONS—MISCELLANEOUS

An effort of the organized agricultural interests of Massachusetts to have the state daylight-saving act invalidated as violating the federal statute of 1918 fixing standard time failed in the case of *Massachusetts State Grange v. Benton*.<sup>131</sup> The Court finds no conflict between the two laws. Furthermore, the facts set forth in the case do not constitute an exception to the rule that "no injunction ought to issue against officers of a state clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury." The tribulations of those who object to daylight saving apparently do not amount to "great and irreparable injury." In a separate opinion Mr. Justice McReynolds expresses the view that the action is beyond the Court's jurisdiction, since it is brought against the state in violation of the Eleventh Amendment.

<sup>130</sup> 272 U. S. 713.

<sup>131</sup> 272 U. S. 525.

It is now established that state workmen's compensation laws can not apply to injuries received in work upon maritime contracts, where the rights and liabilities of the parties are matters lying within federal admiralty jurisdiction.<sup>132</sup> But the Judicial Code of the United States, while declaring the federal maritime and admiralty jurisdiction to be exclusive, saves "to suitors in all cases the right of a common law remedy where the common law is competent to give it."<sup>133</sup> It is held, therefore, in *Messel v. Foundation Co.*,<sup>134</sup> that while the plaintiff, injured in maritime employment, could not recover under the Louisiana workmen's compensation act, he could recover under Section 2,315 of the state code which provides: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." This is the Louisiana equivalent of the common law. The plaintiff's recovery under this section will be governed by the principles "which the admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act (June 5, 1920) incorporated in the maritime law."

<sup>132</sup> *Southern Pacific Co. v. Jensen*, 244 U. S. 205; *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149.

<sup>133</sup> U. S. Code, Title 28, Sec. 41.

<sup>134</sup> 274 U. S. 427.

## LEGISLATIVE NOTES AND REVIEWS

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**The Presidential Primary Since 1924.** The legislation of the past four years offers little cheer to those who hoped to see well-drafted presidential primary laws in force in all of the states. The presidential primary has not merely stood still, but since 1916 it has lost ground with each succeeding presidential election. Since the pre-convention campaigns of 1924, two states—Montana and North Carolina<sup>1</sup>—have repealed their presidential primary laws. In the case of Montana, the question of repeal was submitted to the voters and the repeal was upheld by a vote of 77,948 to 57,640.<sup>2</sup> This is significant in the light of the support which Montana voters have accorded the state-wide direct primary when they have been given the opportunity. Five states, in all, have repealed their presidential primary laws,<sup>3</sup> leaving seventeen mandatory laws still in operation.<sup>4</sup> In 1927 repeal in one other state, i.e., North Dakota, was prevented only by veto of the governor.<sup>5</sup>

Two states have adopted amendments which may tend to lessen the effectiveness of their presidential primary laws. New York, which in 1921 provided for the selection of delegates-at-large by state conventions instead of by direct vote of the people, now provides that delegates-at-large (and their alternates) to the national conventions shall be selected by the state committee or by a state convention, "as the rules of such party adopted at a state convention held for the nomination of state officers may prescribe."<sup>6</sup> A 1927 Illinois law takes

<sup>1</sup> 1927, Ch. 82.

<sup>2</sup> November, 1924. Figures furnished by the secretary of state.

<sup>3</sup> Iowa, 1917, Ch. 14; Minnesota, 1917, Ch. 133; Vermont, 1921, No. 9; and Montana and North Carolina as cited above.

<sup>4</sup> The dates of these primaries in 1928 will be as follows:

New Hampshire . . . . .	March 13	Pennsylvania . . . . .	April 24
North Dakota . . . . .	March 20	California . . . . .	May 1
Michigan . . . . .	April 2	Maryland . . . . .	May 7
New York . . . . .	April 3	Indiana . . . . .	May 8
Wisconsin . . . . .	April 3	New Jersey . . . . .	May 15
Illinois . . . . .	April 10	Oregon . . . . .	May 18
Nebraska . . . . .	April 10	South Dakota . . . . .	May 22
Massachusetts . . . . .	April 24	West Virginia . . . . .	May 29
Ohio . . . . .	April 24		

<sup>5</sup> See his veto message of March 10, 1927.

<sup>6</sup> 1927, Ch. 362.



a step in the same direction by providing for the selection of delegates-at-large by the state convention. It also eliminates the provision for printing the presidential preference of each candidate for district delegate after his name on the ballot. The preference vote for president is retained, but it is merely to secure "an expression of the sentiment and will of the party voters."<sup>7</sup>

Important changes of date have been made by two states. New Jersey will hold its state primary in conjunction with the presidential primary in presidential years instead of separately as formerly, and the date has been changed from the fourth Tuesday in April to the third Tuesday in May.<sup>8</sup> In South Dakota the Richards law has been amended to provide for holding the primary (state as well as presidential) the fourth Tuesday in May instead of the fourth Tuesday in March.<sup>9</sup> The dates of the proposal conventions have been pushed back proportionately. This change in date should have a very salutary effect upon the campaign in South Dakota.

Minor changes have been made in the filing requirements in Michigan<sup>10</sup> and Pennsylvania.<sup>11</sup>

In the Democratic convention of 1928 the delegates from presidential primary states will have less than a majority of the votes, and in the Republican convention they will have a bare majority. Taking into consideration the ineffectiveness of the voters' voice in many of the presidential primary states, it is apparent that these primaries cannot possibly control the choice of the convention.

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**Results of the Split-Session System of the West Virginia Legislature.** Conspicuous among reforms repeatedly urged for the improvement of our state legislative systems is the adoption of the plan of the divided

<sup>7</sup> 1927, Ch. 189.

<sup>8</sup> 1925, Ch. 8.

<sup>9</sup> 1927, pp. 130, 131, 135.

<sup>10</sup> Laws, 1925, Act 351, requiring petitions for placing names of candidates for the presidential preference on the ballot to be signed by 5,000 (instead of 100) eligible voters, and making it impossible for the name of the same individual to appear upon the ballot of more than one party.

<sup>11</sup> 1925, No. 214, changing filing date from not later than four weeks to fifty days prior to the primary.

session, commonly referred to as the bifurcated or split session. states have thus far operated under constitutional provisions mandating a system of divided legislative sessions—California since 1911 and West Virginia since 1921. A competent observer, after a study of the California situation, declared that in practice the split session in that state has proved reasonably successful and that "expectations have generally been realized."<sup>2</sup> But the same degree of satisfaction has not been manifested with the results in West Virginia. The fact that expectations have not been realized is indicated by the adoption by majorities in both houses of the 1927 legislature of an amendment to the constitution proposing to restore the continuous session. The West Virginia situation, therefore, provokes interest and warrants examination and study.

The theory of the split session is very simple. The essential feature is a legislative recess which divides the short preliminary or opening session from the adjourned or final session. During the initial session bills are introduced and assigned to committees, but no other business is done. Then comes the recess, during which legislators, administrators and citizens have an opportunity to scrutinize and digest proposed measures. At the adjourned session no new bills may be introduced except with the consent of an extraordinary majority of the two houses.

The primary purpose of this arrangement is to secure more adequate consideration of proposed legislation, thereby bringing about conformity between public opinion and legislative action. It is expected that the legislature will utilize the recess period for legislative purposes, examining the conduct of administration, and informing itself upon important public questions. Prior to the adoption of the bifurcated session in West Virginia, the business of the two houses had so increased from session to session that it became impossible, within the old constitutional limit of forty-five days, to give legislative business the careful consideration it deserved. Calendars suffered from the serious congestion; much time and labor were lost—in committee sessions on the floor, and in clerk hire—in the handling of bills that died on the calendar.<sup>3</sup> The failure of successive legislatures to enact much-

<sup>1</sup> Senator Nathan Strauss, Jr., of New York City, has urged this plan for the state of New York (*New York Times*, January 10, 1926). Senator George W. Wickersham of Philadelphia, suggested the idea to the Pennsylvania legislature of 1927.

<sup>2</sup> See article by the late Victor J. West in the *National Municipal Review* 1923, on "California—The Home of the Split Session."

<sup>3</sup> For an account of the situation which the split session was intended to correct, see *West Virginia Legislative Handbook*, 1919, pp. 820—821.

legislation stimulated the search for a reform that would promote more efficient legislative procedure. It was inevitable, therefore, that the citizens of West Virginia should be attracted by the split-session idea.<sup>4</sup>

The constitutional amendment which became effective with the 1921 session provides that the regular meetings of the legislature shall continue for an initial period of fifteen days. During this preliminary session no bills may be passed or rejected, unless such bills are especially recommended by the governor as "necessary to provide for a public emergency." A vote of four-fifths of the members elected to each house is required to enact such emergency measures. At the expiration of the fifteen-day initial period, both houses must recess "until the Wednesday after the second Monday of the March following." When the legislature reassembles, no bill may be introduced in either house without a vote of three-fourths of all the members elected to that house. The final or adjourned session may not continue longer than forty-five days, except with the concurrence of two-thirds of all of the members.<sup>5</sup>

Before examining the operation of this system it is important to call attention to other relevant provisions of the West Virginia constitution. Under power vested in him by the budget amendment of 1918, the governor may by proclamation extend regular sessions of the legislature beyond the 45-day limit in order to complete the enactment of the budget bill.<sup>6</sup> But the legislature during the extended session must confine itself solely to that bill. The governor may also convene extraordinary legislative sessions, although at such times the legislature may

<sup>4</sup> The constitutional provision embodying the plan was submitted to the voters of the state at the general election of 1920. A total of 160,929 votes were cast in favor of the amendment; 122,744 were cast against it. At the same election the total gubernatorial vote was almost double the total vote on the amendment proposal. It is also significant that in twelve of the rural counties the vote was overwhelmingly against the amendment, while in six of the more populous ones the vote was heavily in its favor. In the remaining counties the vote was fairly evenly divided. *West Virginia Legislative Handbook, 1921*, p. 365.

<sup>5</sup> Constitution of West Virginia, Art. VI, Sect. 22. The California provision differs in important respects from the West Virginia provision. In California there is no constitutional restriction on the enactment of legislation during the initial session. Also, in California the initial session may continue for not more than thirty days; the interim may not exceed thirty days; and there is no limitation on the length of the reconvened or final session. The provisions of the two states are the same in the important respect that at the final session no bills may be introduced in either house without the consent of three-fourths of the members. See Constitution of California, Art. IV, Sect. 2.

<sup>6</sup> Art. VI, Sect. 51, Sub-sect. D.

enter upon no business, except that stated in the governor's proclamation.<sup>7</sup>

In accordance with the several provisions cited, the schedule of regular sessions has been as follows:

Initial Session	Recess	Final Session	
		<i>45-day period</i>	<i>Adjournment</i>
1921: January 12-26	48 days	March 16-April 29	April 29
1923: January 10-24	48 days	March 14-April 27	June 14
1925: January 14-28	48 days	March 11-April 24	April 28
1927: January 12-26	48 days	March 16-April 29	May 2

It has already been emphasized that one of the objects of the split session is to speed up the work of the legislature. It is important to note, however, that at no time since the amendment has been in effect have the two houses been able to complete their work within the 45-day period allotted by the constitution. In 1923, in 1925, and again in 1927, it was necessary for the governor to prolong the regular session in order to complete the enactment of the budget bill. In 1921, instead of prolonging the regular session for that purpose, the governor called an extraordinary session to accomplish its enactment. Because of the failure of the legislature, furthermore, to take action in certain matters, the governor, in 1923, in 1925, and in 1927, felt it necessary to summon immediately, after the adjournment of the extended regular session, an extraordinary legislative session.<sup>8</sup>

In order to appraise the situation the writer distributed a questionnaire among some fifty members of the Senate and House of Delegates who had served in more than two regular sessions. While the sentiment among the legislators is overwhelmingly against the split-session arrangement, the idea, nevertheless, finds among them a few ardent supporters. Out of twenty-six replies received in answer to the questionnaire, eighteen legislators stated that practical results had not justified the system and that they favored going back to the continuous session; five defended the arrangement and opposed a return to the continuous session; three doubted whether practical results had justified the plan and were indifferent on the question of a return to the continuous session. In the 1927 legislature, the amendment resolution repealing the split-session provision, which will be submitted to the voters in 1928, passed the Senate by a 22 to 7 vote, one senator not voting; the House

<sup>7</sup> Art. VII, Sect. 7.

<sup>8</sup> *Journals of the Senate and House of Delegates*, 1921, 1923, 1925, 1927.

adopted the resolution by a 71 to 3 vote, 20 members not voting.<sup>9</sup> A comparison of the vote with the results from the questionnaire suggests that the opinions expressed to the writer by the twenty-six members are fairly representative of the views of the entire number.

One of the advantages claimed for the split session is that it prevents rushing measures through the legislature without adequate consideration by the main body of legislators. When asked if this result had been achieved in West Virginia, members expressed somewhat diverse opinions. Eight declared that it had been achieved, at least to some extent; eighteen were thoroughly convinced that it had not. In order to make a check on actual conditions, the legislative journals of the last four sessions were examined with a view to ascertaining the number of bills passed by both houses under the four-fifths rule at the initial session, the number of bills introduced in both houses under the three-fourths rule at the adjourned session, and the extent to which the enactment of measures was crowded into the last few days of the session.

In order to pass bills at the initial session, not only must they pass by a vote of four-fifths of the members elected to each house, but they must also be specially recommended by the governor as necessary to provide for a public emergency. Both requirements undoubtedly operate as an effective check on the development of any practice that might result in rushing bills through the legislature during the preliminary session. During the initial session of the last four legislatures, the record of the number of emergency measures recommended and the number finally enacted is as follows: (1) 1921: 9 recommended, 7 enacted; (2) 1923: 8 recommended, 6 enacted; (3) 1925: 9 recommended, 8 enacted; (4) 1927: 5 recommended, 3 enacted.

Thus, during the eight years that the plan has been in operation, while the total number of laws enacted averaged 160 per regular session, the number enacted per initial session averaged only six. Of the 24 laws enacted under the four-fifths rule, 17 referred to purely local matters, such as authorizing a special tax levy in a particular county, amending a city charter, or validating the bond issue of a particular school district. A significant test of the efficacy of the four-fifths rule occurred during the meeting of the 1927 legislature, when the governor sought to enforce the enactment of a measure during the initial session which authorized the issuance and sale of fifteen million dollars of bonds to

<sup>9</sup> *Senate Journal*, April 21, 1927; *House Journal*, April 27, 1927.

raise money for road construction purposes. While the measure received the necessary four-fifths vote in the House of Delegates, the Senate refused concurrence on the ground that the legislature should not precipitate the taxpayers of the state into a further obligation without serious deliberation, nor until the legislature had taken stock of what had been accomplished under the original bond amendment. Since the bill as proposed also provided for a radical departure from the principles which had previously governed the distribution of the road funds, the Senate decided that the bill should go over until the final session.<sup>10</sup> Legislators of long experience concede that the passage of bills at the initial session under the four-fifths rule is rare.

When the legislature reassembles for the adjourned session, no bills may be introduced in either house without the approval of three-fourths of all the members elected to that house. An examination of the journals shows that comparatively few bills are introduced under this rule at the second or adjourned sessions. The following table summarizes the record for the last four legislatures:

*Bills Introduced (Final Session)*

	Senate	House	Enacted
1921:	6	12	13
1923:	3	14	14
1925:	7	18	16
1927:	10	17	23

When it is remembered that the total number of bills introduced during the period under consideration (1921-1927) has averaged one thousand per regular session, an average of 22 bills introduced at each adjourned session does not seem excessive. An examination of the subject-matter of the latter reveals that almost without exception they pertain to insignificant details of purely local concern.

The practice of crowding the final enactment of measures into the last week of the session has not been eliminated. In 1927, for example, 84 of the 196 laws enacted, or approximately 43 per cent, were finally enacted during the last week of the session. On the last day of the session, 39 laws, or 20 per cent of the total, received final approval. Furthermore, practically all bills of general importance are finally passed during the last week of the session. In 1927, 92 measures had passed both houses six days previous to adjournment; but of this number, 75 were purely

<sup>10</sup> *Senate Journal*, January 26, 1927, pp. 48-49.

local measures. An argument usually advanced in favor of the split session is that it will expedite and make more effective legislative consideration of the budget. But it has failed to accomplish this result in West Virginia. At no time since the arrangement has been in operation has it been possible to complete the enactment of the budget bill without either extending the regular session beyond the 45-day limit or convening a special session for that purpose.

Essential to the satisfactory operation of the split-session principle is effective use of the recess period. If legislation more in accord with public sentiment is to result, both citizens and legislators must avail themselves of the opportunity which the recess affords to study proposed measures. Several members reported use of the interim to explain bills to their constituents. One member, for example, wrote that he had called a mass-meeting in his county, which was largely attended; that he had become acquainted with public sentiment and had defeated laws which the home folks were against. But fully two-thirds of the members interviewed were firmly of the opinion that neither legislators nor citizens used the interim to any considerable extent for the purpose intended, that is, to study and discuss proposed legislation. As one member expressed it, "They are interested during the actual working days. The intermission is a recess—like in our school days." Several members admitted that they had not even read the bills at the time when the second session convened. It is doubtless true that for the great majority of both members and citizens the legislative recess is a legislative vacation.

It would be a mistake to conclude, however, that there is a complete suspension of legislative activity and of public interest in legislative matters during the interim period. In two respects, at least, the writer feels that the recess is used to advantage. While it is a matter of regret that the regular standing committees of the legislature do not meet during the intermission, it should be noted that special investigating committees are active during this period. In 1925, joint resolutions authorized the appointment of joint legislative committees to investigate conditions at the state penitentiary, to study the building program of the state, and to investigate charges of corruption and fraud in the construction of the state capitol. Again, at the 1927 initial session, the legislature authorized joint committees to report to the adjourned session on the management of the workmen's compensation fund and on the work of the codification commission. At the same session, when the House of Delegates refused to cooperate in authorizing a joint

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committee to investigate the expenditures by the state road commission of the fifty-million dollar road bond issue, the Senate created a special committee of its own for that purpose. While it is difficult to evaluate the services of some interim committees, occasionally these committees, through the publicity given their proceedings and findings, illuminate pressing public questions in a wholesome way, particularly as they relate to the execution of public policy. The senate investigation of the road commission and the joint investigation of the workmen's compensation fund during the 1927 session effectively demonstrated the practical utility of the recess period. Both of these committees rendered meritorious service in informing legislators and citizens on the conduct of administration and on the wisdom of legislative policy.

The other respect in which, in the opinion of the writer, the recess is used to advantage has to do with the activities of the newspapers. One of the objects of the recess is to give the newspapers an opportunity to explain proposed legislation to the citizens. While in the early years of the experiment the press gave comparatively little publicity to measures during the recess, it is significant that of late this defect has been largely corrected. During the 48 days of the legislative interval of the 1927 legislature, the *Wheeling Intelligencer* published twenty-four editorials and some sixty articles explaining and criticizing the bills introduced. The *Charleston Gazette* printed almost an equal amount of material, always supplementing articles with vigorous editorial comment on the wisdom or unwisdom of proposed measures. At the 1927 initial session, eight correspondents representing seventeen newspapers and the Associated Press reported the work of the legislature to the citizens of the state. It was also at the 1927 initial session that the special tax commission authorized by the 1925 legislature submitted its report. During the recess the newspapers explained in detail the contents of the report, as well as the several bills designed to carry out the recommendations of the commission. The apparent failure of the split-session plan to accomplish results in West Virginia can hardly be attributed to any unwillingness on the part of the newspapers of the state to coöperate.

It is important to examine at this point specific objections offered by those who believe that the bifurcated session in West Virginia has been a failure. Governor Morgan, in his message to the legislature in 1923, and again in 1925, advocated the repeal of the amendment of 1920, declaring that the practical results had not justified the claim that the "double-header" session would give the public an opportunity

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to study proposed legislation during the recess interval. According to the governor's statement, "many of the most important bills are introduced in skeleton form and the public remains unadvised as to the character of proposed legislation."<sup>11</sup> The governor obviously was prejudiced against the experiment from the start. It is true, nevertheless, that bills sometimes undergo such changes in committee that the original bill is scarcely recognizable. "For example, at our last legislature," writes one member, "a local road bill was changed into a general bill relating to employment of convict labor. The sponsor was very indignant at having his bill changed, saying his innocent child had grown up to be a convict." It also happens sometimes that members introduce bills at the initial session to get the approval of the public, and later introduce amendments which make them very objectionable. The clerk of the House for the 1927 initial session lists as skeleton bills 38 out of the 623 house bills introduced.<sup>12</sup> None of the Senate bills were so listed. One member estimates that about five per cent of the bills introduced at the initial session are skeleton bills. While all members interviewed admitted that the practice of introducing skeleton bills exists to some extent, the majority declare that it is not a common practice. Also there is no evidence to prove that "many of the most important bills," to use the governor's phrase, are introduced in skeleton form.

The second and final article in Governor Morgan's indictment of the split session is the extra expense involved. Many of the members who condemn the plan likewise make much of the additional burden to the taxpayers. But this does not impress the writer as a very convincing criticism. The additional expense entailed on the basis of a very liberal estimate approximates \$75,000.<sup>13</sup> The largest item, however, included in this amount is the expenditure for printing and mailing bills. Under the continuous session system, only those bills were printed which were favorably reported by the committee to which they were referred, which was approximately one-third of the total number introduced. Such a practice, however, has vicious potentialities. The extra expense required for the printing and mailing of bills seems highly legitimate, if the law-making process is to be at least reasonably democratic. The only real difference in cost, therefore, between the split session and the con-

<sup>11</sup> *Public Documents of West Virginia, 1923, Vol. I, pp. 38-39.*

<sup>12</sup> *Abstract and Synopsis of Senate and House Bills and Joint Resolutions, Legislature of West Virginia, Regular Session, 1927.*

<sup>13</sup> *Wheeling Intelligencer, March 22, 1927.*

tinuous session is that the former plan doubles the mileage expense of the members. This extra cost does not exceed \$5,000.<sup>14</sup>

Another criticism of the split-session plan as it operates in West Virginia relates to the large number of bills that are poured into the legislative hopper during the two weeks of the initial period. The record of the number of Senate and House bills presented during the last five regular sessions is as follows: 1919, 556; 1921, 904; 1923, 1,083; 1925, 1,102; 1927, 1,001. From this it is manifest that with the advent of the split session in 1921 a very perceptible increase in the number of bills occurred. With such a mass of bills to consider, the theory of the system begins to break down. And this situation is complicated by the additional fact that the majority of the bills introduced propose amendments to existing laws. For example, in 1925 fully fifty per cent, and in 1927 over 60 per cent, of the bills introduced were amending bills. Under the circumstances, therefore, only bills proposing new laws can be taken at their face value; all others must be compared with existing laws in order to tell what changes are suggested. Very few people will take time and trouble to check up to see what changes a bill contemplates. But the large number of bills is, after all, not the fault of the split-session plan, although the large number of bills unquestionably makes that plan very difficult to operate. The real source of the trouble is the existence of a constitutional system that does not provide an effective substitute for the present system of local and special legislation.

In concluding this enumeration of criticisms of the split-session plan, it is important to mention a number of miscellaneous comments. There is considerable complaint because of the failure on the part of the printer to get the bills out promptly. Invariably it is time for the reconvening of the second session before all of them have been printed. A particularly serious fault of the system is the failure of the standing committees to meet until the beginning of the adjourned session. The public generally does not take any interest until the several bills are at least up in the various committees for their recommendation. It is stated, however, that while the average citizen does not study bills during the intermission, corporations employing legal talent do so, and are prepared to combat them or urge their passage according as their interests are affected.

Many members object to the split session on the ground that it is a great inconvenience to members. Several members believe that the

<sup>14</sup> *Journal of the House*, March 17, 1927; *Journal of the Senate*, March 16, 1927.

initial meeting is a waste of time, since bills might as well be mailed to the clerks. There is additional waste of time when the final session convenes, because it usually takes from two to three weeks to get the members down to work. Those members who defend the split session insist that it has resulted in greater publicity for proposed legislation and that it has done away with legislative "jobbery" at the end of the session. Even among those members who want to go back to the continuous session, it is admitted that the present system has resulted in more publicity for proposed measures. Finally—and this may be to the credit of the plan—the politicians of the state, as a group, are unsympathetic toward the split session and are among its bitterest critics.

Our appraisal thus far has concerned itself mainly with specific criticisms of the system, and with observations on the application of the letter and spirit of the principle. But, after all, the real test is the quality of the legislative product. Has the split session brought about the enactment of much-needed legislation? Has it produced laws that conform to popular sentiment? Has it resulted in any increase of satisfaction among the citizens of the state with the outcome of legislative sessions?

Viewed from the standpoint of results achieved, it is unquestionably true that the split session has proved a dismal failure. It has not prevented the enactment of bad legislation; it has not accomplished the enactment of good legislation. There is an abundance of evidence to substantiate this charge of legislative ineptitude and incompetence. The public utilities, and particularly the natural-resource industries, have successfully evaded taxation for a generation.<sup>15</sup> At the same time these predatory interests are rapidly depleting the state's rich mineral resources. While the legislature appropriates the amount of \$1,000,000 biennially to maintain a state constabulary to protect the mine workers, it takes no steps to provide adequate safeguards for the lives of the mine workers.<sup>16</sup> In a single year the state reports 450 fatal casualties from mine disasters. In 1921, in order to meet a serious financial stringency, the legislature passed a law providing a general gross sales tax. In commenting on this tax, the National Industrial Conference Board report declares: "It would appear to be difficult to conceive of a more obnoxious tax than one on general expenditure."<sup>17</sup>

<sup>15</sup> *Wheeling Intelligencer*, March 24, 1927.

<sup>16</sup> *West Virginia Legislative Handbook*, 1926, p. 285.

<sup>17</sup> *The Tax Problem in West Virginia*, National Industrial Conference Board, 1925, p. 178.

Expressions of dissatisfaction with the outcome of legislative sessions crowd the editorial pages of the newspapers at the close of every session. Space permits the inclusion of only a few excerpts. After reviewing the session of 1927, the *Wheeling Intelligencer* concludes as follows: "The depressing farce just ended at Charleston has disgusted every intelligent voter in West Virginia."<sup>18</sup> The *Charleston Gazette*, in a caustic editorial, comments in this wise on the achievements of the 1927 session: "Where the deliberations of the Senate and House might have been utilized in the creation of some kind of laws tending to the advancement of the state, the members were engaged in long-winded and sweaty oratorical warfare on freakish matters such as the length of a woman's skirt, the Bible bill, the "monkey" (evolution) bill, labels on vinegar bottles, and a raft of other nonsense. In short, if you eliminate the local and freakish measures from the bare 100 laws that have been enacted in both houses during the past forty-five days, you can count on the fingers of your hands the law-makers' accomplishments, and you would need scarcely one of those fingers to enumerate the big, visionary, and constructive measures."<sup>19</sup>

One need not probe very deeply into the legislative situation in West Virginia to discover that the people of the state were grasping at a straw when they accepted the split-session plan as a device to extricate them from a condition of legislative futility. There are numerous factors that make any successful application of the idea impossible. Particularly serious is the waste of time on special and local legislation. Only about one-fourth of the bills introduced deal with matters of general state importance. Instead of adopting general municipal codes or inaugurating municipal home rule, West Virginia clings to the archaic special-charter system of municipal government. As a consequence, the legislature spends a vast amount of time in transacting business that should properly be left to city councils. On the other hand, the members are impotent when it comes to legislating on matters of general importance. The constitution imposes a legislative strait-jacket that virtually compels the legislature to confine its activities to trivialities. It is quite impossible, for instance, for the legislature to correct taxation evils under existing constitutional provisions requiring uniformity in taxation. One might also cite the absurdity of the 45-day limit on the length of the final sessions. While such limitations were originally

<sup>18</sup> May 2, 1927.

<sup>19</sup> April 25, 1927.

intended to prevent legislative abuses, they have been aptly characterized by Professor Holcombe as remedies that cure disease only by killing the patient. As long as powerful vested interests, furthermore, dominate the scene at Charleston, there is little hope of legislative emancipation by any such device as the split session.

In conclusion it becomes important, therefore, to emphasize that such a reform can accomplish very little of itself. Under the adverse conditions existing in West Virginia, it was inconceivable from the start that the split session should remedy the situation. Consequently, after eight years it has not made any material difference, one way or the other. While one discovers a partial observance of the letter, and even of the spirit, of the split-session principle, the obstacles it encounters are too numerous to permit of its successful application. The most that one can say is that it secures a little more publicity for proposed legislation. For West Virginia, this may be a mark of progress.

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**A New Index of State Session Laws.** Efforts to secure an index to the state laws extend back just a half-century, to the attempt of the American Bar Association in 1877 to secure an annual review of important legislation of general interest enacted by the states. The most successful undertaking was the annual "Summary and Index of State Legislation Throughout the Union," published by the New York State Library for the years 1890-1908. It was brought to an end by the disastrous fire of March 29, 1911, in the state-house at Albany which destroyed the material for 1909 and 1910. In the conditions which prevailed for some time after the fire it was impossible to renew the work, and its place has remained unfilled in spite of the increasing demand and the almost constant agitation of the subject.

In the Sixty-ninth Congress there were 23,250 bills and 638 resolutions, a grand total of 23,888 introduced, of which 1,422 were enacted into law, the output for the two sessions filling about 2,000 pages. Since most of the states now meet in biennial sessions, it is a fair comparison to say that for each biennium the legislative output of the forty-eight states is twenty-four times as great. As a matter of fact, for the two years 1923-24 the total number of pages in a complete set of the Session Laws is about 42,588. This would include the issues for two years for each of the six states (Georgia, Massachusetts, New Jersey, New York, Rhode Island, South Carolina) still having annual sessions.

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The situation is quite overwhelming. The need of an index to this mass of laws has indeed been a crying one for many years. The burden of preparing such an index should not be borne by any single state. The interest is nation-wide, and the undertaking seems properly a function of the federal government. There is another reason why the federal government is justified in taking up this work. At present fully twenty-five federal government offices, departments, and bureaus are trying to keep up with current state legislation that falls within the scope of their interests. There are at least ten associations of national importance which also are trying to keep track of current state laws.

The subject has been before Congress for a long period and there have been several hearings. Finally it came to a head quite suddenly late in the last session, resulting in an act approved February 10, 1927, as follows:

"Sec. 1. That the Librarian of Congress is hereby authorized and directed to prepare and report to Congress biennially an index and digest to the legislation of the states of the United States enacted during the biennium. Sec. 2. There is hereby authorized to be appropriated annually for carrying out the provisions of this act the sum of \$30,000 to remain available until expended."

An item providing for the necessary appropriation was included in the Second Urgent Deficiency Bill, but was lost in the Senate filibuster at the end of the session. Congress will doubtless make the appropriation which it has authorized, and the Library authorities hope to be fully at work early in the new year. They have not, however, been obliged to remain wholly idle. During the recent long recess they were able to accomplish a good deal by way of preparation for the work.

Almost from its beginning in 1917, the Legislative Reference Service at the Library of Congress has been indexing the state laws on all subjects likely to come under discussion in Congress. It is on the experience thus gained that the Library proposes to base the new state law index. The existing index has heretofore been carried on along broad lines, in the effort to avoid the hopeless labyrinth which too minute indexing of such a mass of material would entail, yet in sufficient minuteness to furnish a key under one alphabet to all general current state legislation within the defined range.

To indicate more exactly the scope of this present index, the following statement of the types of acts which have been excluded is presented: (1) Local, i.e., all acts applying to a specified town, county, etc., or to a specified class, such as cities of the first class, counties of the second

class, etc.; (2) Temporary, i.e., all acts limited in the duration of their effect unless important for some special reasons, such as temporary war legislation, during the war period; (3) Institutions, i.e., all acts applying to a single institution; (4) Private, i.e., all personal legislation, including acts applying to a specified corporation or society; (5) Appropriations; (6) Officers, i.e., all acts prescribing the duties, salaries, etc., of officers, except such as directly affect the subject-matter with which they deal; for instance, an act requiring an officer to make monthly reports would not be indexed, while one requiring local health inspectors to inspect meat would be indexed under meat; (7) Administrative, except as affecting indexed subjects; (8) Courts, except juvenile courts, which are indexed under "Children."

In the revision and expansion of the index to meet the new viewpoint the Library plans to modify these exclusions, and the following tentative rules are suggested: 1. Local. Named localities should still be excluded, possibly excepting the five or six largest cities. The problem in this group is the proper handling of specified classes. There is unlimited variation in the methods of classification in the different states. Up to now, a city, county, or village of a given class has been excluded. The tentative new plan calls for a preliminary survey of classifications in all states. Where a state has not more than three classes of cities, counties, etc., all classes are to be indexed; where, as in California, there is a separate class for each county, each class is to be dealt with the same as a named county; and where the state is divided into too many units to include all, but has a broader classification than in California, classes one and two are to be indexed. Recommendations from those interested for meeting this problem will be most acceptable. 2. Temporary. Acts limited to a definite duration have been excluded unless appearing to be of special interest. While this method necessarily involves the personal equation too much, it should be continued. Here is where information sent in by outsiders familiar with the purpose of the act would be of special value. State laws on this subject are temporary in form, and it is only through channels other than the laws themselves that the indexer can know that such matters are too vital to be excluded. 3. Institutions. To be dealt with as heretofore. 4. Private. The same. 5. Appropriations. Appropriation acts, where a sum is appropriated for the year or biennium only, have been wholly excluded. This policy should be continued. 6. Officers. Laws prescribing salaries, office organization, etc., have been excluded. From a legislative reference or general research point of view they are of little value, but

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presumably they will be of value to state bureaus, etc., and should now be included. It is a question whether the better way to handle this type of law is under headings already in use, e.g., number of employees, salaries, etc., of state board of health under "Public Health," or under a new scheme of administrative headings. If the latter is considered advisable, suggestions from those who are interested in this type of law are desired. In the fields in which the index has been functioning for ten years, experience has qualified the Library to judge of the practical value of any recommendations which may be offered; but on this subject, if the interested parties are willing to present a scheme the Library would accept it and carry it out as nearly as possible. 7. Administrative. As heretofore, but modified by 6 preceding. 8. Courts. Hitherto laws prescribing rules for a superior court, a justice's court, or a municipal court have been excluded. It is the plan now to make a single entry for such acts under "Actions at Law—Specified Courts."

During the 1927 recess Miss Margaret W. Stewart, who has been in charge of the state law index of the Legislative Reference Service since its beginning, and who will initiate the new work, prepared a "Tentative List of Subject Headings and Index Rules for the State Law Index" which has been distributed to some of those who, it is hoped, will be sufficiently interested to examine it and make suggestions for additions and corrections. The best idea of the scope and variety of the subject index now proposed can be obtained by a careful scrutiny of this tentative list.

Heretofore the session laws have been indexed as they came into the Library, the few indexers employed covering all subjects in turn repeatedly. This method loses the advantage of specialization in subject. It is proposed to develop the new index on the basis of specialized indexing. Each volume will first be examined and the chapters classified as to subject-matter, and the chapters dealing with a given subject will then be turned over to an indexer specially equipped to handle that subject. This method will necessitate much more checking and verifying than the method at present employed, to make sure that no acts are omitted or wrongly allocated, and that the references are correct. But the gain in exactness and rapidity will compensate for the additional trouble to secure correctness of reference.

One of the most difficult problems will be that of keeping in touch with what is considered important in new legislation, in order to satisfy the expectations of various groups in the preparation of the annual digest. The Library expects, of course, to do all that it can to keep in



touch with current discussions in published material, but often by the time such material is available it becomes a matter of "locking the barn door after the horse is stolen." For instance, there are constantly recurring statutes concerning a conference between two states on water rights or fishing rights in a certain stream. Ordinarily these are not of the slightest general interest, and for digest purposes would, presumably, not be included in a short review of the year's legislation. At the time the Library was indexing the first authorization for conferences between the states on the Delaware River project it had no warning that this strictly local legislation was to develop into a much-discussed topic. In 1926 several states amended their inheritance tax laws to conform to the Supreme Court decision in the case of *Frick vs. Pennsylvania*. These amendments amounted to little more than changing a "shall" to a "shall not," and as a matter of routine indexing there would be no reason for counting these amendments of special interest. In such cases as the last it takes a considerable amount of very difficult study of the point involved to determine that a new principle has been applied, even after attention has been called to the significance of the change. These problems apply to the proposed digest, rather than to the index itself.

The question has been asked, "Will information concerning current legislation be made available? Will the information be available while the sessions are in progress, or immediately after, and before the index is published?" The answer is in the negative. The act says: "The Librarian of Congress is hereby authorized and directed to prepare and to report to Congress biennially an index to the legislation of the states of the United States enacted during the biennium." There is no mention of an information service. Such a feature would have made it impossible to pass the bill. It will not do to jeopardize the whole enterprise by undertaking an unauthorized activity. If a beginning were once made, the whole indexing staff would soon be working on reports on special topics, and when the time came to make the final report there would be no index. Doubtless the current material will be open to such examination as will not interfere with the work of the indexers, though this is a matter that only the future can determine.

There is the question, too, whether anything is to be done with the codes and session laws previous to the current biennium. This query can be answered at present only to the extent of saying that the subject has been under discussion. The intended method of indexing will, it is hoped, develop experts in certain subjects, taxation for example; and, as Professor Chamberlain pointed out at a hearing on the bill, in

answer to an inquiry from a member of the committee, a digest of the state laws, on taxation for example, covering all the laws in force could most likely be produced and would prove a most valuable compilation. At any rate, it is expected that the expert indexers will in time be able to cover many important subjects in this way.

If the imagination is allowed a little play, two important points soon develop out of this index. Never before has such an opportunity for standardizing the subject terminology of the law presented itself. The lack of standardization of terms is one of the chief stumbling blocks in the way of research work in state laws. With the coöperation of interested groups, it ought to be possible to make the state index a medium for unification of subject headings used in state indexes. In a consolidated index such as that proposed, it is necessary to use a broad, inclusive term, and presumably in each state it is necessary to use the exact term in use in that state. However, a standard term can be adopted from which each state will refer to the specific title used within the state. To illustrate: the title "Small Loan Banks" has been adopted in the Library index to include the various types of financial organizations resulting from the regulation of small loans. These are called "Morris Plan" banks in some states, in others industrial banks, provident loan associations, etc.—some eight or nine different terms in all. If the title "Small Loan Banks" is acceptable as a standard, and each state index carries a cross-reference out from this title to the specific title in use in the state, the riddle of determining where this type of act is to be found in the statutes of the various states is solved.

The index should serve to make apparent the wide divergence in terms now in use, and it is to be hoped that it will ultimately serve to unify them. If interested associations and groups, such as bankers and insurance associations, could agree on a representative term to designate a special type of organization for which new legislation is enacted and make their decision available so that the act or acts would appear in the biennial index under that term, the index itself would serve as a medium for establishing that term in other states subsequently adopting similar laws. The present situation is illustrated by a recent study of building and loan associations in the United States which lists one hundred and fifty names by which these associations are known!

The second point is that by the proposed method of indexing from a classified collection of the laws the indexers may possibly be able to lay the foundation for a complete collection of state laws classified by

subject. The advantage of such a collection to an investigator studying any phase of social, economic, or other development would be very great.

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**The Work of the American Legislators' Association.** The American Legislators' Association was organized in 1925 and held its first annual meeting following that of the American Bar Association in Denver in July, 1926. The second meeting preceded that of the American Bar Association in Buffalo in August, 1927. The Association is composed of members of legislatures in the various states, and its principal accomplishment to the present time has been a study of the legislative field and the formulation of a concrete program. This work has now been completed, and the Association hopes during the coming year to begin carrying out its proposals in a vigorous manner.

For generations past there has been widespread criticism of legislative conditions. The organization of this Association is an attempt to give a constructive turn to this criticism. The importance of the field is indicated by the fact that our state governments alone own property worth more than one and a half billion dollars and annually spend more than thirteen hundred million dollars. And of course our state legislation affects the activities of more than one hundred million individuals. It is the feeling of the new organization that there should be a dynamic agency to give currency to all deserving proposals designed to improve the law-making process in the various states. The fact is recognized, however, that mere procedural changes can never make the situation satisfactory, and that the improvement of the personnel of our legislatures is among the fundamental needs.

In an article prepared by the president of the Association after the Buffalo meeting, the following passage appears:

"We entirely concur in the statement which is continually reiterated by all thinking Americans that our legislatures contain many members who lack the mentality, the training, and the disinterested motives which should characterize legislators. We believe, however, that the mere repetition of contemptuous criticism and supercilious ridicule makes this situation worse rather than better. This is not the method which an intelligent employer would adopt toward those in his employ. We believe that there are definite and comprehensible reasons on account of which our states fail to secure a reasonable proportion of

legislators of the best type. We believe that no state can hope to induce a large number of capable, educated, responsible men to offer their services for legislative work unless the state is prepared to do its part as any other employer must do, by offering each man who will serve adequate pay, a contract of employment for a term sufficiently long to justify him in making the expenditure of time, money, and effort necessary to secure the position, a position of responsibility and dignity commensurate with the labor involved, adequate assistance in the performance of his task, and the coöperation of other reputable individuals in his work. . . . In many states these results cannot be accomplished without constitutional amendments, which will require campaigns of public education. We propose to encourage all efforts necessary to bring about conditions which will render legislative service attractive to citizens of the best types. We consider it apparent that with the advent of more high-class legislators, many unsatisfactory conditions would be corrected by them without the assistance of any association such as ours. On the other hand, we believe that the better the personnel of our legislatures becomes, the more serviceable will our work prove to be."

The program of the Association as adopted at the Buffalo meeting comprises six features, which were formulated as follows:

1. A clearing house for the legislative reference bureaus of the various states. It seems desirable that every state should maintain a legislative reference bureau, or some corresponding office, as a part of the state government, to render assistance to legislators who desire it in matters of research and drafting. It is a part of the program of this Association to advocate the maintenance of such a bureau by every state. There are already more than a score of them. As their number increases, it will become more necessary that some office should function as a clearing house in order to avoid duplication and to expedite the researches of each bureau.

2. An informational switch-board through which any legislator or the director of any reference bureau can "plug in," and at once be connected with the best source of information in the United States concerning his current problem. It is not so much the plan to compile data as to make more readily available the vast amount of work already being done by legislative reference bureaus and by many other responsible agencies. Our main compilation will concern the best sources of information.

3. A periodical sent to every one of the 7,500 legislators, with information concerning (a) the recommendations of the Commissioners on Uniform State Laws, and of other organizations such as the American Bar Association, the American Medical Association, the National Education Association, and the National Conference on Social Work, including our own committees; (b) new reports, periodicals, and books of possible value to legislators; (c) noteworthy innovations in legislative matters; and (d) noteworthy methods of attaining legislative efficiency.

4. An annual meeting of legislators on the Monday of the week during which the Bar Association meets. It is safe to say that from one-fifth to one-third of our legislators are attorneys; in other words, from 1,500 to 2,500 lawyers hold office as legislators today. It is moderate to anticipate that eventually five or ten per cent of them—from 75 to 250 individuals—will combine attendance at this meeting with attendance at the American Bar Association meeting.

5. A Legislative Assembly at the time of this annual meeting, being a session of ninety-six legislators, one elected by each branch of each legislature. The main purpose of this Assembly will be to consider the proposals of the Commissioners on Uniform State Laws, and to consider proposals for interstate compacts.

6. A dozen committees, each dealing with an important subject of legislative concern, and each having an advisory board of twenty individuals who are recognized as national authorities in the committee's field. Thus we hope that some day we shall have a functioning committee on health composed of ninety-six legislators, most of whom are the chairmen of the medical or health committees of their respective houses in the state legislatures; and that, to counsel it, this committee will have an advisory board of twenty nationally prominent physicians, heads of health departments, and officials of national organizations concerned with health matters. In fact, our twelve advisory boards are already organized, and they contain over 200 men of genuine distinction. The health committee is to meet at the time of the annual meeting of the American Medical Association; the committee on social welfare at the time of the National Conference on Social Work; the taxation committee at the time of the meeting of the National Tax Association.

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## NOTES ON RURAL LOCAL GOVERNMENT

EDITED BY THOMAS H. REED

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In introducing for the first time in the *American Political Science Review* notes on rural local government, it seems fitting to make some general observations upon the lack of information concerning the organization and operation of county and township government on the part of members of our profession. Municipal government has long been the subject of careful study, and numerous agencies exist for the collection of material on that subject. In particular, the National Municipal League has served as an agency through which changes and developments in municipal government in all parts of the country have been communicated to those most interested in them. The recent establishment of its research department serving as a clearing house for the bureaus of municipal research has still farther advanced its service in that direction. In addition, there are several good periodicals to which any one in search of trustworthy material on municipal government may turn. The case of county and township government is entirely different. Courses in rural local government are offered in a few universities, and there are some individuals who know a good deal about the historical development of the subject. There are few indeed, however, who know much about the details of rural local government outside their own state. One of the principal reasons for the establishment of a department of rural local government notes in the *Review* is to offer an opportunity for the periodic—at least annual—publication, in available form, of information that may come from various parts of the country. It may lead in time to the development of some organization actively interested in the improvement of county government. The notes offered in the present number relate to scattered phases and make no pretense of covering the field. It is hoped that next year numerous contributions will be available. In this way only can the department offer a real service to the membership of the American Political Science Association. (T.H.R.)

**The Proposed Charters for Westchester County, New York.** The county has long been regarded as the unexplored and unreformed area of American politics. While the reformers have been busy effecting changes in the nation and in the states the county has been virtually untouched, and its governmental machinery exists today much as it

was two generations ago. However, the vast changes which are taking place in what President Wilson used to refer to as "the processes of our common life," coupled with the widespread demand for economy in our governmental units, are likely soon to force a measure of reform on the reluctant counties. Strong evidence of the necessity for, and of the practical difficulty of, bringing it to pass have recently come from the state of New York. In his message of January 5, 1927, Governor Smith said: "One year ago, I made a definite proposal that a study of county government be made in order to effect a consolidation of counties wherever practicable and an elimination of the very palpable waste in conducting county government throughout the state. I renew that recommendation." And then he added: "In fact, the cost of supporting these units of government [counties] is increasing \$8,000,000 to \$10,000,000 yearly, and the burden of that taxation is the real one which people in the rural communities find so heavy."

On November 8, 1927, by a vote of 45,730 to 33,902, the people of Westchester county defeated for the second time a proposal for the modernization of their county government. So far, outside of California, little has happened in the way of actual achievement of county reform. Consolidation is only a project in New York State. But there, and in certain other states, the driving force of economy is likely in time to bring results in this matter. This is certainly so in those areas where a marked decrease in population has made the support of several county governments in a sparsely settled region a genuine financial burden to the citizens. A case in point is the upper peninsula of Michigan, where the decline of the copper mining industry has considerably reduced the population from the boom days in which the present county units were created.

Progress in the consolidation of counties and the abolition of units now no longer needed will be much easier in some parts of the country than in others. Counties differ among themselves in social unity, the possession of genuine traditions, and the development of a sense of solidarity. Most American counties are, as Napoleon said of Italy in the late eighteenth century, merely "geographical expressions." In regions of this sort, county consolidation should encounter no great difficulty and, under the stimulus of financial saving and that diminution of distances which the automobile has brought, should be achieved without great effort. Of course, a county which has a distinguished history, common traditions, social unity, and the glamour of distinguished names, will look askance at submergence in another political

unit or merging with a comparatively alien territory. One cannot think for a minute of Fairfax county, Virginia, or Lancaster county, Pennsylvania, surrendering its identity.

Turning from the question of consolidation to that of reform of organization, nothing more significant has happened in the past few years than the repeated attempts made to reconstruct the government of Westchester county, New York. Although the immediate reforms proposed for this county have failed of adoption, twice by popular vote and once by veto of the governor, the attempt is worthy of study because of its intelligence, and also because it represents a type of reform which will be attempted in other places, probably with eventual success.

Westchester county lies on the mainland immediately north of Greater New York. It has a population of half a million people, distributed over four hundred and forty-eight square miles, and includes within its borders four cities and twenty-three villages. It is sometimes facetiously referred to as "the dormitory of New York City."

The first of the so-called Westchester county charters was embodied in an act of the legislature of the state passed on April 9, 1925 (Ch. 587, Session Laws of 1925), and known as the Westchester County Government Act. This act was passed in conformity with Article 3, Section 267, of the New York constitution, which says, in part, that "there shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period, as is or may be provided by law." This particular act concerning Westchester county was made possible by a constitutional amendment adopted in 1921 which permitted the legislature, subject to local referendum, to provide special types of government for Nassau and Westchester counties because of their large populations, their proximity to New York City, and the prevailing dissatisfaction with their form of county government. The proposed charter was defeated at the polls on November 3, 1925.

The 1925 charter for Westchester county was framed by a non-partisan commission and afterwards submitted to the state legislature. It constituted almost the high-water mark of proposed county reform in America up to that time, and is an earnest and an indication of the lines which county reform may follow in the next generation. Considering what a remarkable document it was, the wonder is not that it was defeated but that it polled as many affirmative votes as it did. It contained the elements of reform long desired in the American county. It provided for a county executive in whom was centralized the govern-



ment of the county, and who in turn was removable by the governor. It consolidated the work of the county in a few departments, abolished some of the antiquated offices, and established a definite budget system.

Under the Westchester charter there continued to be a board of supervisors, consisting of the supervisor of each town and the supervisors elected in each city. The board in Westchester has a total of forty-one members. Under the new form this board was confined entirely to legislative matters, and even some matters of this character were taken away from it. The executive power of the county was vested in the county president and in other executive officers and departments provided by law or by ordinance of the board of supervisors. There was created a new official for America in the county president. He was to be elected by popular vote for a term of four years and to receive a salary of \$15,000 a year. The qualifications specified a citizen of the United States who had been a resident of the county for five years prior to his election. The county president could be removed from office by the governor, although he must be given a copy of the charges against him and must have an opportunity to be heard in his own defense.

Thus there was created a public office the occupant of which in many ways resembled the mayor rather than the manager of a city. Like the latter, he was presumed to give all of his time to the job, and he was to be paid a salary fifty per cent greater than that received by the governor of the state. Although the county president might be a professional, he could not come from any region other than that which he governed. Also he was to be responsible to no local governing board in the sense that the city manager is. It is hard to see how he could avoid getting mixed up to some extent in local politics.

The statute defined the powers of the county president as being (1) to see that the county officers and departments faithfully performed their duties; (2) to see that the laws of the state pertaining to the affairs and government of the county, and the ordinances of the board of supervisors, were executed and enforced within the county; (3) to communicate by written message to the board of supervisors at least once a year a statement of the finances and of the general condition of the affairs of the county, with such recommendations in relation thereto as he might deem proper; (4) to give such information in relation to the same as such board might from time to time require; (5) to receive and examine into all complaints made against any county officer for neglect of duty or malfeasance in office; (6) to examine the books and papers of any officer, employee, or department of the county, and as often as

he might deem proper to appoint one or more competent persons to examine, without notice, the accounts of any county officer or department, and the money, securities, and property belonging to the county in the possession or charge of any county officer or department, and to report the result of such examination; (7) to subpoena witnesses and compel the production of books, records, papers, and documents, and administer oaths to witnesses, and take affidavits, in relation to the affairs of the county, in any matter concerning which a power or duty was conferred or imposed upon him by this chapter, any other law, or any ordinance of the board of supervisors; (8) to cause a monthly audit to be made of all moneys received and paid out by the commissioner of finance; and (9) to perform such other duties as might be prescribed in this chapter or other law or by ordinance of the board of supervisors, not inconsistent with law.

There was also to be a vice-president of the county, chosen by popular election for a term of four years and receiving an annual salary of \$7,500. When by reason of sickness or absence from the county the president was unable to perform his duties, the vice-president was to act as president and exercise all the presidential power and receive the emoluments of the office. In ordinary times one of the chief duties of the vice-president was to preside over the board of county supervisors.

There were set up in the county eight departments of administration. The heads of six of these, i.e., welfare, law, public works and buildings, engineering, weights and measures, and health, were to be appointed by the president. The confirmation of the board of supervisors was not necessary to complete the appointment; and these six officials were to hold office at the pleasure of the president.

The elective offices of treasurer and comptroller were abolished and their functions devolved upon an elective commissioner of finance. The office of coroner of Westchester county was abolished and the duties were to be exercised by a medical examiner, who was to be appointed by the board of supervisors. This was the only one of the eight departments where the supervisors had any voice in the selection of the directing official. The medical examiner was required to be a physician of at least three years' practical experience in his profession within the county, and was to receive such salary as the board of estimate and apportionment might determine. The constitutional offices of sheriff, county clerk, district attorney, and county judge were to be filled by popular election as before.

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One of the interesting institutions which the charter set up within the county was the board of estimate and apportionment. Here one sees the influence of the Greater City. The board was to consist of the president, vice-president, and the commissioner of finance. The president was to be the chairman of the board and the clerk of the supervisors its secretary. Unlike its metropolitan counterpart, there was equal voting within the board. The board was to submit to the supervisors, before the first of December of each year, an estimate of the amounts necessary to run the county for the next year. The board fixed the salary and compensation of county officials save where it was fixed by law. The only change the board of supervisors could make in the budget was to strike out or reduce items, and they were unable to do this in the case of salary items. The board of estimate could create or abolish positions in all departments. It also served as a board of contract and supply and had extensive investigative authority.

When the proposed charter was discussed by the electorate in October and November, 1925, various objections were made to it. Some of them have much more validity than others. In the main, they were as follows: (1) It was claimed that the charter curtailed home rule in the cities, villages, and towns. (2) Some people said that it gave the county president excessive powers. (3) It was even stated that it was merely a move in the direction of annexation to New York City. (4) The conservatives said the whole thing was entirely too revolutionary. (5) It was further alleged that it would destroy representative government because it would reduce the board of supervisors to a rubber stamp. (6) Some opponents pointed out that it failed to state which powers were legislative and which administrative. (7) Certain of the more practical-minded claimed that the power of patronage in the hands of the county president would permit him to build up a powerful political machine.

The referendum was held November 3, 1925, the same day that there was a mayoralty election in the Greater City. The charter was defeated by a majority of 5,275, there being 34,216 negative votes and 28,941 affirmative votes. It was defeated in the townships. Three of the four cities—Yonkers, White Plains, and Mount Vernon—voted in its favor.

In 1926 another charter for the county was passed by the legislature. However, this one did not please Governor Smith and he vetoed the bill, giving two reasons for so doing. He said that the charter proponents, in an attempt to modify the first charter to meet the demands of some of the people who had opposed it, had weakened the usefulness of the charter by giving too little executive authority to the man to whom the

responsibility was to be given. Also he objected to the proposed charter because of its failure to provide any measure of home rule for Westchester county.

In his message of March 16, 1927, Governor Smith again brought the case of Westchester and Nassau counties to the attention of the legislature, and in his message of that date said: "I am informed that an amendment has been prepared affecting Westchester and Nassau which will greatly improve the present conditions in the constitution. I strongly recommend that you adopt this amendment so that these two counties may be given an opportunity to take the steps for county reorganization which I am sure will ultimately benefit the entire state. There has also been presented to you a new charter for Westchester county which it is proposed to adopt immediately so as to avoid the long delay which must necessarily result if you wait until a new constitutional amendment is adopted. Last year I vetoed the proposed Westchester charter in part because of its failure to provide any measure of home rule for the county. This defect will be cured by the adoption of the constitutional amendment to which I have referred and which provides that changes of a fundamental nature in a charter after it is once adopted can be made only by referendum vote of the people of the county."

The amendment referred to by the governor was brought up at the 1927 session of the legislature and will again be brought up in the 1928 session. The proposed Westchester charter was passed and signed by the governor (Session Laws of New York, 1927, Chapter 566). This act of 1927 was essentially the same as the charter which was submitted to the electorate in 1925 and rejected by them. There were a few minor changes; for example, the board of supervisors was to be able to make emergency appropriations for the sheriff and the district attorney. Also, to the board of estimate and apportionment as constituted under the act of 1925 were added the county attorney and the county engineer. Also, the sewer commission was exempted from the provisions of the act, which was not the case in 1925. Finally, the act provided that the form of government might be abandoned on the initiative of the board of supervisors or of ten per cent of the voters at the last general election, upon approval by the electors.

This act of 1927 was submitted to a vote on November 8, 1927. There was considerable sentiment for it among people who believed that a municipal corporation with assets of \$1,250,000,000 should have an orderly and responsible head to run the government. Very vigorous

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objections were made by persons who felt that home rule was not yet assured to the inhabitants of the county. These people pointed out that the charter was simply a legislative act which might be amended by another session of the legislature without any consideration of the sentiments of the inhabitants of the county. While admitting the need of an improved type of government, they objected to the change in advance of the adoption of an amendment to the state constitution. In the election of November 8, 33,902 votes were polled in favor of the charter and 45,730 against it, giving an unfavorable majority of 11,828. The returns on the charter by cities and townships, as reported to the Republican county headquarters, compared with the official vote cast on the charter of 1925 as follows:

	1927		1925	
	For	Against	For	Against
Bedford . . . . .	589	971	464	734
Cortland . . . . .	1,173	2,703	629	2,593
Eastchester . . . . .	1,348	1,333	1,065	799
Greenburgh . . . . .	2,097	3,644	1,505	2,732
Harrison . . . . .	331	835	384	479
Lewisboro . . . . .	140	243	103	256
Mamaroneck . . . . .	1,042	1,770	717	1,288
Mount Pleasant . . . . .	1,416	2,261	1,048	2,081
Newcastle . . . . .	380	749	397	542
Northeastle . . . . .	277	244	188	236
North Salem . . . . .	93	272	77	277
Ossining . . . . .	1,058	1,682	919	1,822
Pelham . . . . .	587	1,666	666	983
Pound Ridge . . . . .	43	142	60	109
Rye . . . . .	2,119	2,925	1,910	2,043
Scarsdale . . . . .	540	1,052	420	381
Somers . . . . .	174	282	119	283
Yorktown . . . . .	183	629	108	589
Mount Vernon . . . . .	4,290	4,373	3,717	3,300
New Rochelle . . . . .	3,477	4,100	2,560	3,701
White Plains . . . . .	3,065	2,903	2,492	1,848
Yonkers . . . . .	9,525	10,951	9,167	7,270

Although failing in two general elections, it is inevitable that a charter along the lines of the act of 1925 or 1927 will in a few years be adopted and put into operation in Westchester county. As Governor Smith has well phrased it, in speaking of certain aspects of the charter: "These

are improvements which have been sought by interested authorities in all the counties of the state and the experiment in Westchester will be of tremendous advantage elsewhere."

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**Home Rule for Westchester and Nassau Counties.** The constitutional amendment referred to by Dr. Cuncannon as passed by the 1927 session of the legislature adds to existing provisions for forms of government for Westchester and Nassau the following:

"After the adoption of such form of government by the county, no law which abolishes or creates an elective office or changes the voting or veto power of or the method of removing an elective officer, changes the term of office or reduces the salary of an elective officer during his term of office, abolishes, transfers or curtails any power of an elective officer, changes the form or composition of a legislative body, or provides a new charter for such county, shall become effective without adoption and approval by the electors of such county. No other special or local law affecting the counties of Westchester or Nassau, or either, shall be passed by the legislature except in conformity with the provisions of this section. After any such bill has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the clerk of the board of supervisors or other governing elective body of such county, and within fifteen days thereafter such clerk shall return such bill to the clerk of the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the clerk's certificate thereon, stating whether the county has or has not accepted the same. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill before the board of supervisors or other governing elective body of the county before action thereon, and the board of supervisors or other governing elective body shall act for the county as to such bill, provided that if under such form of government there shall be an executive head of the county, the concurrence of such executive head shall also be required for the acceptance of such bill by the county. Whenever any such bill is accepted as herein provided, it shall be subject, as are other bills, to the action of the governor. No such bill shall take effect until at least sixty days after the approval by the governor, or its final adoption by the legislature notwithstanding the disapproval of the governor; nor unless and until adopted and

approved by the electors of the county, if within said sixty days there shall be filed with the county clerk of the county a petition protesting against such bill executed by electors of the county in number equal to at least five per centum of the total number of votes cast in the county for governor at the last gubernatorial election. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the county, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature and it shall then be subject as are other bills to the action of the governor, but shall not take effect unless and until adopted and approved by the electors of the county. In every such law which has been accepted by the county to which it relates, the title shall be followed by the words 'accepted by the county;' in every such law which is passed without such acceptance, by the words 'passed without the acceptance of the county.'"

**Five Years' Progress of the Westchester County Park Commission.** Although, for the reasons indicated in Dr. Cuncannon's note, Westchester county has failed to adopt a modern, or at least quasi-modern, plan of county organization, it has concurrently succeeded most magnificently in one of the most significant county efforts of recent years. The Westchester County Park Commission was first organized under legislative authorization in 1922. It consists of six members appointed by the board of supervisors. The Commission took over, to begin with, the portion of the Bronx River Parkway entirely in Westchester county and immediately proceeded to develop a system of parks and parkways distributed over the whole 448 square miles of the county area. The Bronx River Parkway has been paralleled by other parkways following a general north and south direction along the banks of Saw Mill River, Sprain Brook, Hutchinson River, etc. In the northern part of the county extensive reservations of wild land have been taken over. Sea-shore parks have been developed at Glen Island and Rye Beach. At Tibbetts Brook Park, just north of the New York city line, in Yonkers, fine swimming pools and bath houses have been erected. At White Plains, the county seat, a beautiful county-center building has been projected, and at least a portion of the money has been appropriated for its construction.

The total area of parks and parkways now under the jurisdiction of the Commission is 16,189 acres. Leaving out of consideration the Bronx River Parkway, the county of Westchester has expended \$39,232,000

on the acquisition and improvement of these parks and parkways. Not only has the work been extensive, but the planning of it has been admirable. It is generally regarded as the most significant park development that has taken place in recent years. A great increase has occurred in the assessed valuation of Westchester county, for which the Commission is inclined to take a large share of the credit. There seems no good reason to doubt that the opening of these attractive parkways penetrating into the heart of the county has greatly improved the residential qualities of the region. In America we have become accustomed to look for very little that is far-sighted and constructive from county governments. It is encouraging to make note of this admirable achievement.

(T. H. R.)

**The North Carolina Legislature Takes Advanced Ground with Regard to County Government.** At its 1927 session the legislature of North Carolina adopted an act of first importance in the trend toward better county government in the United States.<sup>1</sup> The act constitutes by far the most important constructive step of the past year. It provides for two forms of county government, the county commissioner form and the manager form. The county commissioner form is the current form of county government, but the act provides for the adoption of modifications on petition of ten per cent of the persons voting for governor at the last election and approval by the electors of the county. The modifications which may be adopted in this manner relate, first, to the number of commissioners, which may be increased from three to five or decreased from five to three; second, to the term of office, by fixing the term of commissioners at two years; and third, to the term of office and composition of the board. Under this last provision, "at the first election, if the board is to have three members, one may be elected for two years, one for four years, and one for six years, but if the board is to have five members, two may be elected for two years, two for four years, and one for six years." This plan contemplates a six-year overlapping term for county commissioners.

The manager form may be adopted by the board of county commissioners on their own initiative, or it may be adopted by popular vote upon a petition of ten per cent of those voting for governor at the last election. The board of commissioners is given considerable latitude in the selection of a manager. It may appoint a non-resident of the county,

<sup>1</sup> *Public Laws of North Carolina, Session of 1927*, Chap. 91.



it may confer the managership upon the chairman of the board of county commissioners, or it may confer the powers of manager upon any other officer or agent of the county. The duties of the manager are those usual among managers of cities, except that the power of appointment must be exercised "with the approval of the county commissioners." Of course, the manager's power under no circumstances extends to officers whose election or appointment is otherwise provided for by law.

The act goes farther than the mere organization of county government. It requires that the board provide "so far as possible, consistent with law, for unifying fiscal management of county affairs, for preserving the sources of revenue, for safeguarding the collection of all revenue, for guarding adequately all expenditures, for securing proper accounting of all funds, and for preserving the physical property of the county." Such a provision, of course, is somewhat in the nature of a pious wish which may not result in action, but it is important as indicative of the new attitude toward county government. The board of commissioners is required to purchase supplies in such a manner as to prevent waste and duplication and to obtain the advantages of purchasing in large quantities. To that end it is authorized to appoint a county purchasing agent.

A very interesting feature of the act is the creation of a county government advisory commission. This commission is to consist of five members appointed by the governor, "who are qualified by knowledge and experience to advise and assist the county officials in the proper administration of the county government. At least three of the members of the commission shall be selected from the boards of county commissioners then in office." The term is to be fixed by the governor, but is not to exceed four years. The members of the commission serve without compensation except their actual expenses. The duties of the commission are set forth in the act as follows: "The duties of the commission shall be to take under consideration the whole subject of county administration; to advise with the county commissioners as to the best methods of administering the county business; to prepare and recommend to the governing authorities of the various counties simple and efficient methods of accounting, together with blanks, books, and other necessary improvements; to suggest such changes in the organization of the departments of the county government as will best promote the public interests, and to render assistance in carrying the same into operation. They may make such recommendations to the governor from time to time as they may deem advisable as to changes in the

general laws controlling county government, and such recommendations may be submitted by the governor, upon his approval, to the next meeting of the General Assembly."

What is perhaps the most important feature of the plan, however, is the fact that the commission is authorized to appoint an executive secretary whose duties include visiting the counties of the state and advising and assisting the "county commissioners and other county officers in providing a competent, economical, and efficient administration." The salaries of the executive secretary and other employees of the commission are to be fixed by the commission, by and with the advice and consent of the governor. The provision for a full-time secretary gives some guarantee that the functions of the county government advisory commission will be vigorously and effectively performed. The final provision of the act is one for a codification of existing county government laws by the attorney-general of the state.

(T. H. R.)

**Virginia Moves Toward Modern County Organization.** The so-called "Governor Byrd amendments" to the constitution of Virginia, submitted to the extra session of the 1927 legislature, contain the following significant addition to Section 110 relating to county officers: "Notwithstanding the provisions of this article, the General Assembly may by general law provide for complete forms of county organization and government different from that provided for in this article, to become effective in any county when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon."

The following section relating to magisterial districts and the election of supervisors is also amended to be subject to the provisions of Section 110. Thus the way is opened for the provision of model forms of county government by the General Assembly, which may be adopted by the people of the counties as fast as public sentiment warrants.

Of course neither the North Carolina nor the Virginia provisions even approximate the freedom granted to California counties many years ago. In that state Los Angeles and several other counties have already adopted "home rule" county charters. Los Angeles, in particular, has proceeded further, in the development of a highly organized county government to care for the enormous semi-urban population which clusters around the city of the same name, than has any other county in the country.

(T. H. R.)

## FOREIGN GOVERNMENTS AND POLITICS

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**The British Trade Disputes Act of 1927.** One does not speak of the rights of American trade unions glibly or in off-hand fashion. Unlike the English policy of defining the rights of labor by legislative enactment, our legislatures, both federal and state, have been particularly slow to make such definition. Such predicability as the labor law has thus far assumed has been largely the work of the courts. Here, in other words, we discover the rights of trade unions in the opinions of the courts; in England, we have been accustomed to look to the statute-book rather than to judicial opinions. Comparatively, English labor law has at least enjoyed the merit of being reasonably predicable. The acts of 1859,<sup>1</sup> 1871,<sup>2</sup> 1875,<sup>3</sup> 1906,<sup>4</sup> and 1913<sup>5</sup> were all designed either to make the existing law more definite or to overturn a judicial interpretation of the law adverse to labor. Thus, by the year 1927 the law was rather definite. The statutes contained statements of what labor could or could not do. A reading of the recent Trade Disputes and Trade Unions Act of July 29, 1927,<sup>6</sup> raises the question whether this legislation marks a change in the English policy of fixing the rights of labor by legislative definition.

The immediate occasion for the recent act was the general strike of May, 1926. Introduced and rushed through Parliament by the present Conservative government, this measure failed to receive the preliminary study and consideration that preceded the introduction of the acts of 1871 and 1906. In the case of these measures, royal commissions were appointed to ascertain the existing law relating to trade unions, in order that amendments might be proposed with knowledge of their probable effects.<sup>7</sup> In view of the extraordinary circumstances that

<sup>1</sup> 22 Vict. c. 24 (1859).

<sup>2</sup> 34 and 35 Vict. c. 32 (1871).

<sup>3</sup> 38 and 39 Vict. c. 86 (1875).

<sup>4</sup> 6 Edw. VII c. 47 (1906).

<sup>5</sup> 2 and 3 Geo. V c. 30 (1913).

<sup>6</sup> 17 and 18 Geo. V c. 22 (1927).

<sup>7</sup> A memorandum report of the findings of the royal commission of 1869 may be found in Sir William Erle's *The Law Relating to Trade Unions* (London, 1869). Sir William was chairman of the commission and formerly chief justice in the Common Pleas. Cf. Report of the Royal Commission on Trade Disputes and Trade Combinations, 1906. Cd. 2,825.

brought about its introduction and the strong opposition which the recent bill aroused, it would seem that an impartial investigation of the whole situation might well have been made before the proposal of new legislation. In the course of the debates, three questions especially needed clarification: (1) What are the facts as to the abuses of trade unions? (2) Are the abuses contrary to existing law? • (3) If abuses exist, are they such as are capable of being dealt with by fresh legislation?

Many Britishers, more particularly members of the Liberal party, were inclined to say, "Why not leave things alone? Why arouse controversy at a time when coöperation is especially required between employers and employed?" The feeling among this group was that the costly failure of the general strike (which was clearly recognized by trade union leaders) was sufficient indication that legislation was unnecessary to prevent the success of such an assault.<sup>8</sup> Rather this was a time when a peaceful policy of conciliation might be more effective in laying the foundations for future industrial peace than a vindictive spirit that would put labor in its place by means of legislation. Such a course, in the opinion of this group, served only to rally all the suspicion and revive all the bitterness that time was beginning to allay.

Sir Douglas Hogg, attorney-general and chief spokesman for the government, laid down four reasons why amendment to the existing law was urgent. First, a general strike or an attempt to coerce the community should be made illegal; second, intimidation should be made illegal; third, no one should be compelled against his will to contribute to the funds of any political party; fourth, civil servants should pay their entire allegiance to the state.<sup>9</sup> The present bill was, therefore, addressed to the attainment of these four objects.

While it is obviously true that the bill was not confined to the general strike, these four propositions appear so harmless, so fair and justifiable, that one may find it difficult to conceive how any one, even members of the Labor party, could possibly object to them. And yet around this bill was waged one of the most stubborn parliamentary battles in modern British history. Questions of the timeliness, expediency, and scope of the bill, especially the scope, provoked lengthy and heated controversy. Although it was pretty generally agreed that the general strike ought to be outlawed, there were a few, even in Conservative

<sup>8</sup> *Parliamentary Debates* (5th Series), Vol. 205, p. 1793.

<sup>9</sup> *Ibid.*, p. 1305.

ranks, who were frank to confess that the government was open to valid criticism for dealing with this subject by way of legislation.<sup>10</sup> Had not a court of law, as well as prominent legal authorities, gone on record on the question of the illegality of the general strike? In the case of the National Seamen's and Firemen's Union v. Reed, Mr. Justice Astbury had spoken directly on the point:

"The so-called general strike," he said, "called by the Trades Union Congress is illegal and contrary to law, and those persons inciting or taking part in it are not protected by the Trade Disputes Act of 1906. No trade dispute has been alleged or shown to exist in any of the unions affected, except in the miners' case, and no trade dispute does or can exist between the Trades Union Congress on the one hand and the government and the nation on the other. The orders of the Trades Union Congress above referred to are therefore unlawful, and the defendants are at law acting illegally in obeying them, and can be restrained by their own union from doing so."<sup>11</sup>

On the same day on which this opinion was delivered, Sir John Simon, an eminent Liberal lawyer, commented on the decision in a speech before the House of Commons and declared in no less certain terms that the general strike, whatever the provocation or explanation, was not a trade dispute at all. The Trade Disputes Act was discussed in the House of Commons in the first year that Sir John was a member. "What Parliament had in mind in 1906," he said, "when it spoke of a 'trade dispute' and guaranteed immunity for trade union fund, was a strike of a lawful character."

It is also interesting to note that six years prior to the general strike, in the calm of industrial peace, an outstanding barrister, a member of

<sup>10</sup> London *Times*, April 26, 1927. See the speech of Sir Arthur Steel-Maitland.

<sup>11</sup> As to the law on trade union benefits, Justice Astbury continued: "No member of the plaintiff union or any other trade unionist in this country can lose his trade union benefits by refusing to obey unlawful orders, and the orders of the Trade Union Congress and the unions who are acting in obedience thereto in bringing about the so-called general strike are unlawful orders, and the plaintiff union is entitled to have this fact made clear and brought to the attention of its members." Further, the justice explained: "The trade union funds in this country are held in a fiduciary capacity and cannot legally be used for or depleted by paying strike pay to any member who illegally ceases to work and breaks his contract without justification in pursuance of orders which are unlawful." These propositions are reenacted in Clause 2 of the Trade Disputes and Trade Unions Act, 1927. This opinion delivered in the High Court of Justice, Chancery Division, May 11, 1926, is reported in full in Appendix II of Sir John Simon's collection of speeches published by the Macmillan Company under the title *The General Strike*.

Parliament, and an authority on the law relating to trade unions, Sir Henry Slessor, ventured to express an opinion on the legality of the general strike. "There has recently arisen for consideration," he wrote, "the question how far a strike for political objects—'direct action,' as the journalists have called it—that is a strike to interfere with or constrain the government in conduct which trade unions do not approve, can be said to be a strike in contemplation or furtherance of a trade dispute. This matter has fortunately not yet had to be decided, but I have very little doubt that such a strike would not be covered by the words in the definition in the Trade Disputes Act."<sup>12</sup>

Conceding, then, that under the existing law the general strike was illegal, what justification could the government set up for enacting legislation against it? Was not the law as it stood sufficient? The minister of labor, Sir Arthur Steel-Maitland, stating the government's case for the bill, answered this question by saying that the purpose of the government in dealing with this subject by parliamentary statute was to make the law so clear that there could be no misunderstanding of it. Very few people, he declared, thought that the general strike was illegal or understood that the immunities given to trade unions by the act of 1906 did not apply to it. Much the same confusion existed, the minister added, about peaceful picketing, and it was good to have the whole subject cleared up so that the law might not be broken through ignorance. In other words, in the mind of the minister of labor, the purpose of the government in enacting this bill was to declare the existing law. "There is not one proposition of the bill," he explained, "which restricts in any way the legitimate activities of trade unions"<sup>13</sup>—not realizing, apparently, that there may be considerable difference of opinion on the question of what are "legitimate activities." Sir Douglas Hogg, questioned time after time as to the scope of the bill, made observations of a similar character.

These explanations and interpretations of the bill did not satisfy representatives of the Labor party, nor are they likely to satisfy any one who reads the act carefully. It seems reasonable to believe that the Conservative government had a broader purpose in introducing the measure. Indeed, the words of Prime Minister Baldwin and Sir Robert Horne afford rather convincing evidence of it. "For a century past," Mr. Baldwin began, "there has been frequent trade union legis-

<sup>12</sup> *The Law Relating to Trade Unions* (London, 1921), pp. 72-73.

<sup>13</sup> *London Times*, April 26, 1927, p. 9.

lation, and the last important act passed was the act of 1906—nearly a generation ago. That act put the law . . . in a position that few of us who took part in the 1906 election expected to see it take. . . . The majority [of the royal commission appointed to inquire into the subject of the law affecting trade unions] did not propose to put the unions in the position in which they were put by the ultimate legislation, and the bill, as originally introduced, did not do so either. But for some reason which has remained a mystery to all outside the Liberal party until this day, and is still, the attorney-general was thrown over by his own prime minister, within a couple of days, and the bill took a far more extreme form than, as I say, had been expected in the country. That bill . . . put associations, to whatever class they belonged, in what a layman would call a position of irresponsibility; that is to say, they ceased to be liable in certain circumstances for wrong actions which they might commit. One would have thought that being in a position of irresponsibility of that kind, the moral responsibility became all the greater, because there were in that legislation certain seeds of trouble which developed in subsequent years.”<sup>14</sup>

Continuing, Mr. Baldwin said that there had been a great change since 1906, both in the attitude of and the ground covered by trade unions. The emphasis had distinctly moved in the last twenty years from industrial action to political action; the tendency had been to proceed from constitutional action to direct action. In some unions, Mr. Baldwin said, power had been gradually getting in the hands of what is today called the “minority movement.” Individual picketing had at times given way to mass picketing. This, he believed, followed from a view, so common in England, that under the act of 1906, when once a strike was declared anything that men on strike did was legal. In the 1926 strike, he continued, there were many instances of intimidation that were actually against the law, but which were considered to be within the law by those who had committed the offense.<sup>15</sup>

<sup>14</sup> *Parliamentary Debates* (5th Series), Vol. 205, pp. 1654–1655.

<sup>15</sup> This line of reasoning is strikingly similar to that of Chief Justice Taft in the case of *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344 (1922). Here, in the face of judicial precedent to the contrary, the Chief Justice declared largely by way of an *obiter dictum* that trade unions are legal entities, and, as such, are suable in their corporate capacity. Any other ruling, he argued, would produce a situation wherein “the legislature has authorized the creation of numerous bodies of men capable of owning great wealth and of acting by agents with absolutely no responsibility for the wrongs that they may do to other persons by the use of that wealth and the employment of those agents.” Chief Justice Taft cited, in this connection,

These words speak for themselves. True it is that the prime minister felt the need for making the existing law more certain. At the same time, he stated as a fact that the act of 1906, as finally adopted, had the support of neither the country nor a majority of the royal commission. It was, in his opinion, a mistake in 1906; it was, by reason of changed conditions, a more serious mistake in 1927. Subsequent years, and especially the coal strike of 1926, only served to confirm this opinion.

Using somewhat less guarded language, Sir Robert Horne observed: "Trade unions stand today in this country in a position of privilege which is enjoyed by no other similar organization in any part of the world and which puts them beyond the obligations of legal conduct which are imposed on the ordinary citizen. They had no right to these privileges; they ought never to have had them. They have used them with infinite hurt to the country and they ought to be taken away."<sup>16</sup> On another occasion Sir Robert expressed what he believed to be the effect of the bill: "We must all appreciate," he said, "the fact that any trade union leader must naturally show his hostility to this bill. It makes modifications in privileges which have been long enjoyed by trade unions, and it proceeds to curb certain powers which they have used now for many years."<sup>17</sup>

It is hardly necessary to explain that these views as to the purpose and effect of the bill are not those stated by Attorney-General Hogg in introducing the measure. The sole reason for its introduction, according to the attorney-general, was to prevent the recurrence of the deplorable events of May, 1926—to declare and make known the existing law. No material changes in the law were contemplated.<sup>18</sup> By its efficacy in that direction the act must primarily be judged.

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the famous Taff Vale case (1901) A. C. 426, the first English case on record in which the question of the liability of a trade union was distinctly raised and in which a court of law pronounced a trade union liable in action for tort. The effect of the Trade Disputes Act of 1906 was to nullify the Taff Vale decision and grant trade unions certain immunity from the law of torts. It was against this very type of immunity that both Chief Justice Taft and Prime Minister Baldwin were arguing. It should be noted, however, that Taft was speaking as a member of the Supreme Court of the United States, and his opinion has been followed in lower federal and state courts. Mr. Baldwin was speaking as a member of the House of Commons and advocating legislation to cover the point. His objections to the existing law in this regard are covered in the recent act.

<sup>16</sup> *London Times*, April 26, 1927.

<sup>17</sup> *Parliamentary Debates* (5th Series), Vol. 205, p. 1507.

<sup>18</sup> *Ibid.*, p. 1305.



Debates on the bill centered chiefly around Clauses 1 and 3. Designed to declare illegal any strike with an "object other than or in addition to the furtherance of a trade dispute"—that is, a general strike—Clause 1, as it appears in the act, goes further and deals with any strikes which occur in more than one "trade or industry" if it is "designed or calculated to coerce the government either directly or by inflicting hardship upon the community."<sup>19</sup> Under these provisions, Labor leaders and a prominent English authority on the law relating to trade unions agree that the sympathetic strike is outlawed. Strikes of this character were admittedly lawful under the existing law, and it was repeatedly stated in the House of Commons that there was no intention to alter the law on this subject. The legal history of trade unions demonstrates, however, both in England and America, that the purposes of those who make the laws may go very far astray when these same laws are interpreted by the courts. It was not intended, in 1871, that trade unions, as such, should be suable in tort. But thirty years later they were held to be suable. It was perhaps not intended in 1890 that the Sherman Anti-Trust Act should be applicable to trade unions. But the Supreme Court, in 1908, held that the language of the act embraced the activities of labor.

A careful perusal of this clause, embogged as it is with many pitfalls, makes it difficult to predict what interpretation the courts will place upon it. Without attempting to catalogue all the difficulties which the clause presents, who can say with assurance, for instance, what the object of a trade dispute is? The object of a strike is presumably the object of those taking part in it. Even they may not be entirely agreed; in fact, they may be diametrically opposed. To allege the existence of an object other than the furtherance of a trade dispute may offer a very perplexing problem. The terms "designed" and "calculated" clearly do not mean the same thing. Precisely what is the difference between them? The act does not say. Very few strikes, it may be argued, are designed to coerce the government or inflict hardship upon the community; yet almost any strike is calculated to have this effect.

Again, what is meant by "inflicting hardship upon the community"? Public inconvenience is an incident of practically every strike. When a large part of the population has to walk to and from work on account of a transport strike, considerable inconvenience, if not hardship, is

<sup>19</sup> A similar provision with reference to the lockout is also provided in this clause. The bill, as originally framed, however, was directed merely against illegal strikes.

likely to result. Whether such inconvenience or hardship is within the meaning of this clause is another question. Under existing law, any strike "from whatever motive or whatever purpose (including sympathetic or secondary strikes) apart from crime or breach of contract" was legal. Questions as to its object, or as to whether it occurred in more than one trade or industry, or as to whether it coerced the government or worked hardship upon the community, did not call for an answer. These questions will certainly demand consideration under the present act. It is quite conceivable that a magistrate or court may hold any strike, whether sympathetic or otherwise, in a public utility such as transport, gas, light, and so forth, or a strike in any basic industry, such as mining, to be calculated to coerce the government or inflict hardship on the community, and therefore criminal.

It is important to note, moreover, that Section 2 under this clause makes any person taking part in an illegal strike "liable on summary conviction to a fine of not more than ten pounds or imprisonment for not more than three months, or on conviction on indictment to imprisonment for a term not exceeding two years." Nor does the fact that a strike is illegal merely expose the striker to fine or criminal punishment. Section 4 denies all the protection conferred upon trade-union officials and trade-union funds by the Trade Disputes Act of 1906 and the Emergency Powers Act of 1920.<sup>20</sup> Furthermore, any application of the funds of a trade union in contravention of this clause may, under Clause 7, be restrained by an injunction upon application of the attorney-general. This provision was regarded in the House of Commons as an importation from the United States and should be of special interest to American students.

As for Clause 3, which has to do with the prevention of "intimidation," much the same observation can be made as in the case of Clause 1. The type of language used in the two clauses is almost identical. It is simply a question of what interpretation the courts will give the loose and somewhat vague language employed.<sup>21</sup> The law as it stood prior to the present act allowed workers, in pursuance of an industrial dispute, to go a long way toward persuading a minority of their fellow-workers, and others, to abide by the decision of the majority. The acts of 1875 and 1906 set definite bounds within which picketing could properly be

<sup>20</sup> 10 and 11 George V c. 55 (1920).

<sup>21</sup> Interesting discussion of this clause will be found in *Parliamentary Debates* (5th Series), Vol. 206, p. 1607.

carried on. According to the old definition, these limits were not reached otherwise than by acts of violence or threatened violence. Under the present act the definition of intimidation is less certain (and apparently broader) in character. The "expression 'to intimidate' means to cause in the mind of a person reasonable apprehension of injury to him or to any member of his family, or to any of his dependents, or of violence or damage to any person or property, and the expression 'injury' includes injury to a person in respect of his business, occupation, employment, or other source of income, and includes any actionable wrong."

Clearly this definition may be construed by a court sufficiently literal and sufficiently unsympathetic so as to bring the most innocent conduct within the ambit of this clause. It would be quite easy to cause reasonable apprehension in the minds of certain persons. Add to vagueness of definition the fact that injury includes other than material or physical injury, and you have language that is scarcely declaratory of the existing law. Moreover, persons are denied the right to obtain or communicate information, or to persuade or induce any person to work or to abstain from working, "*in such a manner as to be calculated to intimidate.*"<sup>22</sup> Nor does it matter that such persons are acting in pursuance of a lawful strike. This is enough to show that "peaceful picketing" will hereafter be a more dangerous activity than in the past.

Mention should be made of Clauses 4 and 5, which make specific changes in the law. As the law stood, members of trade unions were subject to a levy for political purposes unless they took a definite step of "contracting out." Clause 4 of the present act declares that they shall not be subject to the political levy unless they give notice in writing of their willingness to contribute to that fund.<sup>23</sup> Although this change seems neither unfair nor revolutionary, it aroused the hostility of the Labor party, since they regarded it as a political stroke the results of which accrue to the advantage of the Conservative party. They feared that individual inertia would deprive the party of the subscriptions of many who were not at all averse to contributing to the political fund of Labor.

During the general strike it came as a distinct shock to find that civil servants were subjected to pressure, from trade unions or from the Trade Union Congress with which the unions were affiliated, to turn against

<sup>22</sup> Italics are mine.

<sup>23</sup> For the debates on this clause see *Parliamentary Debates* (5th Series), Vol. 206, p. 2060 ff.

the state. This was an intolerable situation. A civil servant could not be loyal to the state, which was his duty, and to an outside organization operating against the state. Clause 5 deals with this subject.<sup>24</sup> The act, quite reasonably, permits civil servants to have organizations within the service, but prohibits affiliation with outside trade or political organizations.

No further analysis is needed to show that the present act, far from being declaratory of the existing law, may ultimately be found to have reversed or altered the law in regard to certain valuable rights of trade unionists.<sup>25</sup> Seeking to make the general strike illegal, the government by the use of vague and uncertain phraseology went, as it appears, beyond the necessities of the case.<sup>26</sup> Clause 1, as has been shown, may be interpreted in such a manner as seriously to encroach upon a fundamental principle which has long been recognized in the statute law of England, namely, the right to strike. Seeking to prevent intimidation, against which the existing law made adequate provision, the government introduced language in Clause 3 which will render picketing, however conducted, altogether unsafe. Clauses 4 and 5, as already noted, make definite changes in the standing law.

An essential requirement of a good statute is sufficient definiteness and certainty that the law-abiding man may know what he may do and what he may not do. To elucidate and to clarify the law was indeed one of the main reasons for passing the present act. Surprising as it may seem, the chief complaint that can be made against the statute is that "it does not clarify; it muddles old obscurities and creates new ones."<sup>27</sup> How can statutory provisions embodying as a crucial test of their application such vague expressions as "designed or calculated to coerce the government," "inflict hardship upon the community," etc., comply with the elementary requirement of certainty.

<sup>24</sup> *Parliamentary Debates* (5th Series), Vol. 207, p. 35 ff

<sup>25</sup> Members of the Labor party feel sure that the effect of the act will be disastrous. "There cannot be the slightest doubt," one member declared, "that if this bill does become law the workers of this nation will be thrown back into a position exactly identical with that which they occupied 103 years ago, before the repeal of the 'combination laws' under the government of William Pitt." *Parliamentary Debates* (5th Series), Vol. 205, p. 1579.

<sup>26</sup> The fact is that the language of this statute is such that its effect cannot be definitely known until it is interpreted by a court of law. In this connection, see the speech of Sir Henry Slessor, *Parliamentary Debates*, Vol. 206, p. 1015 ff.

<sup>27</sup> From a speech of Mr. Lloyd-George. *Parliamentary Debates* (5th Series), Vol. 205, p. 1804.

It will be remembered that the employment of elastic and uncertain phraseology was the curse of trade unionism from 1824 to 1871, when the terms "molestation" and "obstruction" were construed by the judges to mean almost anything. Members of the Labor party freely declared that the present bill was deliberately drafted so as to be full of ambiguities, to the end that the courts might place their own interpretation upon it.<sup>28</sup> Although this accusation may well be questioned, it is undoubtedly true that the language in which the act is couched leaves a great deal to the discretion of the judges. This fact was sufficient to arouse the fears of the Labor party, since the courts have not heretofore shown themselves particularly favorable to the interests of the workingman.

Herein lies the chief significance of the act. Beginning in the early fourteenth century, the English policy has been that of determining the rights of labor by legislative definition or enactment. Since 1825, the history of trade unionism in relation to Parliament has been one of widening recognition and of increasing power and influence under sanction of the law. During this same period there were important judicial decisions which seriously restricted the rights, powers, and functions of trade unions. Comparatively, then, Parliament has always taken a broader view of the rights of labor than have the courts. In fact, several of the most important parliamentary acts were designed to correct or reverse judicial decisions, so as to strengthen and protect the interests of trade unions. It has been left to the present government to reverse the policy of a hundred years by enacting not only a measure which invades certain established rights of labor, but a measure so loosely phrased as to leave its ultimate scope for the final determination of the courts. Representatives of the government, it is true, declared time after time that no material changes in the law were intended. But such pronouncements, as every one knows, will count for little or nothing in a court of law, whose function is to construe, not the intentions of His Majesty's ministers, but the language of the act of Parliament.

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<sup>28</sup> "The attorney-general," one member declared, "with the expression of a cherub from an old Italian painting, hides behind a seraphic face one of the keenest brains in this country. He knows how to draft a bill, if he wants to draft it, so that the people who read it can understand it. He knows that perfectly well. I suggest that this bill in its drafting is quite deliberate for the purpose of making the trade unions a cote of pigeons for the lawyers to pluck." *Parliamentary Debates* (5th Series), Vol. 205, p. 1679.

**The Irish Free State Elections of September, 1927.**<sup>1</sup> The voters of the Saorstát Éireann went to the polls on September 15 to elect a new Dáil. This was the fourth election under the P.R. system and the second election of the year. Despite the importance of the issues involved and the strenuous efforts of the two larger parties, the total poll was only 35,000 votes greater than in the previous June. But a total poll of 1,180,000 votes is a good record for the Free State, even though on a percentage basis it does not appear large. The present inefficient state of the register makes a percentage comparison somewhat misleading.

To the student of political institutions the election was interesting because of its bearing on several important matters: proportional representation, the development of the party system, political education, and parliamentary government. Not the least of these was proportional representation. There has been much discussion of P.R. in the Free State, and the Cumann na nGaedheal, or government party, made a promise in the election campaign to modify or abolish the system if returned to office. It remains to be seen whether this pledge can be carried out. But in the meantime it is interesting to point out how the system appears to have operated in the most recent election.

Some of the English newspapers undoubtedly exaggerated the evils of the system, the *Sunday Express* even saying that "one consequence of the election will be the abandonment of an experiment which distorts rather than expresses the opinion of the voters." Such a statement is hardly correct. Proportional representation, with a few minor exceptions to be noted later, appears to have mirrored the mind of the electorate. If the electorate is over-divided, it is not the fault of P.R. that a parliament is returned in which no one party has a majority. Perhaps the parliamentary result is unfortunate, but it can scarcely be said that P.R. did not work as it was intended; for the first preferences cast in the election are quite properly reflected in the personnel of the new Dáil. Furthermore, how well the Irish people have been able to work their system can be observed in the tabulations.<sup>2</sup> In watching

<sup>1</sup> Professor Pollock writes from personal observation of the elections. *Man. Ed.*

<sup>2</sup> If we omit Dublin University, in which the candidates were returned unopposed, the average quota for each one of the 149 contested seats was about 8,000. The government party polled 58 quotas and obtained 61 seats; Fianna Fáil polled 52 quotas and secured 57 seats; Labor, 13 quotas and 13 seats; Farmers, 8 quotas and 6 seats; National League, 2 quotas and 2 seats; and the Independents, 13 quotas and 12 seats. The vote polled for each party and the seats secured were as follows:

the counting of the ballot papers, one can see how excellently the voters have succeeded in expressing their preferences. It is a rather complicated system, but this fact does not need to bother the voter when he goes to the polls; and it certainly does not bother the election officials, for they proceed with great expertness and expedition to ascertain the will of the voters.<sup>3</sup>

On the other hand, certain undesirable results of P.R. as it operated in the recent elections are clearly discernible. First and foremost, it is questionable whether it gave the state a government which can govern effectively. In the last two elections it has produced a stalemate, so that the real decision in important matters could, and still can, be made by small groups in the Dail. The tendency of the system to produce many small groups and to prevent one party from securing a majority are the two results which cause the loudest complaints. A realization of what the result of the election would have been without P.R. gives added impetus to those who would abolish the system.<sup>4</sup>

In the next place, it was found that "plumping" was being indulged in to such an extent, as in County Donegal, that the final result really did not correctly reflect the will of the voters. Also in Kilkenny, where President Cosgrave was the candidate,<sup>5</sup> the preferences appear to have been given without much judgment, a number of officials remarking that the Irishman, being naturally a friendly creature, and seeing an opportunity to be kind to both parties, marked his ballot in such

<i>Party</i>	<i>Votes</i>	<i>Seats</i>
Cumann na nGaedheal	453,064	61
Fianna Fail	411,833	57
Labor	105,271	13
Independents	104,059	12
Farmers	74,723	6
National League	19,000	2
Communist	12,473	1

<sup>3</sup> On the count of the first preference votes in 29 constituencies, the seats secured by each party were: Cumann na nGaedheal, 20; Fianna Fail, 12; Independents, 3; Labor, 1; National League, 1; Farmers, 0.

<sup>4</sup> The government party had the largest vote in 17 out of the 29 contested constituencies; Fianna Fail had the largest vote in 9 constituencies and the Independents in 3 constituencies.

<sup>5</sup> President Cosgrave also stood for Cork City, which seat he also won. Having to make a choice between Kilkenny and Cork, he decided to resign the Kilkenny seat and sit for Cork City. This resignation caused a by-election which was won by Denis J. Gorey, formerly the leader of the Farmers' party but now a member of Cumann na nGaedheal.

a way as to neutralize his influence and produce a stalemate. Finally, it is obvious that many mediocre members slipped in on the strength of high-class men who happened to be placed on the same list.<sup>6</sup> It is not at all clear that P.R. will produce as good candidates as the single-member constituency plan.

The election has done much to develop the Irish party system. Despite proportional representation, a strong attempt was made to return to the two-party system. There emerged from the election two strong party organizations, amply financed and reasonably well directed. At the same time, the smaller parties practically disappeared, though due to the equality of the two large parties, they hold the balance of power. The election has brought about a realignment of parties, so that now we have Cumann na nGaedheal, the Farmers' party, and the Independents lined up against Fianna Fail (the De Valera party), the Labor party, and the National League—although the latter can scarcely be called a party. It is possible that all of the small groups will disappear by the next election; but it is also possible that a year or two will demonstrate that only by means of coalitions can the Irish parliamentary system be operated.

So far as political activity was concerned, this election eclipsed all others. Never had the Irish people been so continuously bombarded with oral and written propaganda. Incidentally, much of the newspaper advertising was well written and showed the right tendency to appeal to the intellect rather than to the emotions. True enough, there was plenty of balderdash. But it was encouraging to note the absence of violence or disorder, and to learn that there was only an inconsiderable amount of corruption—quite a contrast to Irish elections of yore. It was rather strange to hear Fianna Fail candidates attack the governor-general, calling him "the puppet in Phoenix Park;" for in the other self-governing dominions this official is accepted as is the king in England. But it must be remembered that the parliamentary tradition has not yet become deeply rooted in Ireland, and too much must not be expected of the Free State in so short a time. Needless to say, great strides have been made toward orderly and efficient government, and the student of political institutions has much to learn from Free State administration.

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<sup>6</sup> The central headquarters of the two large parties had much to do with the nomination of candidates, in many cases imposing their choices upon the local constituencies.



**German Public Officers and the Right to Strike.** The German national public officer—a term which covers public employees of every rank, from watchmen and gate-keepers to the chancellor, and in every type of occupation, from engineering to diplomacy, from teaching to service on the bench of the highest courts<sup>1</sup>—has a very special status, governed in part by the constitution, in part by the Law of Officers, and in part by many other statutes, such as a law fixing salaries. This status involves many rights and privileges, and on the other hand, many duties and restrictions. The oath of office required of all national officers consists of a pledge to be faithful to the constitution, obedient to the laws, and conscientious in the performance of official duties. The law requires every officer to conduct himself at all times, even in his private capacity, in such a way as to merit the respect due to his office. Misconduct is liable to the “ordinary” penalties of reprimand, warning, and money fine, or, after due hearing, to the “disciplinary” penalties of suspension and dismissal. The criminal code takes cognizance of certain specified crimes and misdemeanors in office, such as the improper bringing about of arrests and prosecutions, and the falsification of official records. Naturally, the officer is also liable when he commits any other type of crime or misdemeanor.

The rights and privileges of public officers are very substantial. National officers are appointed, as a rule, for life; unless any appointment is specified as being revocable, it is *per se* a life appointment, involving protection against arbitrary dismissal or suspension. The office-holder is entitled to a salary, to a retirement allowance if reorganization causes him to be retired temporarily while still of working age, and to a permanent retirement pension after the age of sixty-five. Disability after ten years of service also entitles him to a permanent pension, and he may be granted one even if he has served for a shorter time. He may be given a special allowance in addition to his salary or pension, to equalize the cost of living in his locality with that in other localities; and recently he has had, in addition, a variable allowance to meet the increase of prices. He is granted a certain sum for the support of a wife, and an allowance for each dependent child in his household. Elaborate schemes of public insurance, legal restraints upon the mortgaging or assigning of his official income, and the right

<sup>1</sup> Although in the nature of things persons serving in the army and the navy have a special status, some of the laws affecting “officers” in general are made applicable to them also.

to sue the Reich for his salary and other perquisites make his financial protection very complete.

He enjoys also a title which is esteemed by the public, and legal protection is accorded against insults to him in his official capacity. He is guaranteed by the constitution the right of free political opinion and free association, and that of special representation through organizations of public officers. He has access to his personal record, in which no fact may be entered which is unfavorable to him until he has been given an opportunity to express himself.

His life status is safeguarded by the constitutional provisions that the duly earned rights of officers are inviolable, and that a means of protest must be provided him against any disciplinary sentence, with the possibility of a rehearing. The Law of Officers provides for such procedure before special tribunals called disciplinary chambers, and in second instance, before a national disciplinary court. The regular courts will take cognizance when the matter is one not merely of discipline, but of crime, such as embezzlement; if they acquit the officer, he is not subject to disciplinary procedure under the same charge. All of the constitutional and legal rights of other citizens, with a few exceptions dependent upon the official status, are enjoyed by the officer.

Nowhere in the national constitution or statutes is there any mention of the right of public officers to strike. The question came before the courts in connection with a railway strike in 1922. An "emergency" ordinance issued by the national president, under the comprehensive powers bestowed on him by Article 48 of the national constitution,<sup>2</sup> forbade employees of the national railways (who have the status of public officers), as well as all other officers, to suspend or to refuse the duties obligatory upon them, and imposed penalties upon all persons who sought to induce a railway strike, or acted to bring one about. The validity of this ordinance was attacked, particularly on the ground that Article 159 of the constitution, which guarantees to all occupations freedom of association for the purpose of preserving and developing conditions of labor and of economic life, is not among the fundamental rights which Article 48 authorizes the president to suspend. The highest national court of ordinary jurisdiction, the Reichsgericht, upheld the

<sup>2</sup> Article 48 gives the president the right to take the necessary measures to restore public safety and order when these are seriously disturbed or endangered—if necessary, with the help of the armed forces. To this end he may suspend certain fundamental rights specified in the article. His emergency measures must, however, be revoked at the demand of the Reichstag.

ordinance in two important decisions, which read in part as follows:

I. "The formal justification of the national president for the issuing of this ordinance arises from Art. 48, par. 2, R. Verf. 1919, . . . . He can set aside in whole or in part several fundamental rights. . . . Art. 159 does not belong to these articles of the constitution. But this does not oppose the validity of the ordinance, since its provisions do not contradict Art. 159, as will be shown.

"The ordinance lays down in Section 1, paragraph 1, the fundamental principle, 'Officers of the national railway, like all other public officers, according to the law of officers now in effect, are forbidden to suspend or refuse the work which it is their duty to perform.' . . . The law of officers . . . specifies in Section 2, that the national officers . . . (except, etc.) . . . are appointed as for life, and in Section 10, that every national officer is obliged to perform conscientiously the duties entrusted to him, in accordance with the constitution and the laws. . . . In Section 72 it is said: 'A national officer who violates the obligations laid upon him commits a breach of duty and has incurred a disciplinary penalty.' Herein is expressed a prohibition of suspension or refusal of work. . . .

"The establishment of the official relationship, like its conclusion, rests upon a sovereign act of the appointing authorities. . . . But during the continuation of the appointive relationship, Section 10 of the national law of officers forbids any suspension or refusal of work. The special relationship of authority of a public legal kind lays upon the officer a special duty of obedience, fidelity, and service, that is different from the obligations of contractual employees, as is demonstrated in his pledging by oath. . . . As 'servant of the public as a whole' (Art. 130, RV 1919) he has to place all his energies . . . at the service of the state for the development and fulfilment of the functions of the state, [and] . . . to fulfil conscientiously the duties entrusted to him; and he may therefore not refuse to fulfil legal official orders of the higher authorities.

" . . . Art. 159 leaves the question open as to what means may be applied to attain the end [there] safeguarded. The consequence thence arising, that the freedom of association guaranteed in Art. 159 to all occupations and thereby to public officers also, for the purpose of safeguarding and developing conditions of labor and economic life, does not also include the right to strike, is established by the fact that in accordance with the discussions in the committee of the constituent German National Assembly (Aktenstück No. 391, p. 389 ff.), in the session of the

National Assembly of July 21, 1919 (Bd. 328 S. 1749), the reporter, without meeting any contradiction, declared that through the recognition of freedom of economic and social association the so-called right to strike was not also established according to the constitution. . . .

"Thus through the national constitution no change has been made in the former legal situation, whereby civil servants did not possess the right to suspend or to refuse the work which it was their duty to perform, on economic or social grounds.

" . . . The state court established, that the defendant on February 3, 1922, at 7 o'clock in the morning, had to enter upon his duties at the trainyard (Stellwerke) in M., and that he actually at this time did relieve the employee who was at work; but, furthermore, that he not only prevented the use of the lever which would have permitted the exit of the passenger train for C. . . . but that he also represented himself to the conductor . . . as a director of traffic, and as such caused him to couple the locomotive to freight cars . . . but to leave the remainder of the train standing in M. Therefore he did not, as he now claims, simply lay down his work. . . . That the hindering of the exit of the passenger train . . . was contrary to the obligations of his work and was therefore an illegal action, the state court has correctly held."<sup>3</sup>

II. "The review held that the ordinance of February 1, 1922, contradicted Art. 159 R. Verf. 1919, in so far as its fundamental principle was the prohibition of suspension of work by the employees of the national railway. Such a conception finds no support . . . in Art. 159, which seeks to guarantee . . . freedom of association for the purpose of preserving and developing conditions of labor and economic life, and does not mention suspension of work as a means to attaining this end: It cannot . . . be recognized that the freedom of association of Art. 159 . . . includes the right to strike, that is, voluntarily, in violation of existing contractual obligations, for the purpose of achieving certain economic or political ends, generally to lay down work. . . . But it is evident from the proceedings of the National Assembly that the question of the so-called freedom to strike was not decided in the constitution. For exactly this reason, in Article 159, the designation 'freedom of association' was selected, instead of the expression 'freedom of coalition,' which according to its general interpretation would also have included the right to strike. . . . The freedom of association guaranteed in Art. 159 therefore does not include constitutional protection for the means which are employed to preserve and develop

<sup>3</sup> *Entscheidungen des Reichsgerichts*, St. 56, pp. 412 ff.

conditions of labor and economic life, especially the suspension of work. . . .

"According to the law now in effect, the civil servant does not stand in respect to the state in a simple contractual relationship of private law; the appointment as civil servant, on the contrary, establishes a relationship of public-legal authority, with special obligations of fidelity, obedience, and the conscientious fulfilment of the duties imposed. The oath . . . particularly expresses this. A violation of any duty has not merely private-legal consequences, to be enforced by means of suits at civil law, but rather leads to a direct procedure against the officer in the course of the service; the fulfilment of the official duties can also be compelled by fines. Without such a close union of the officer to the state, which involves on the other side the guarantee of a secure position which may be considered permanent (Art. 128), and of a special protection in the exercise of duty, the state cannot fulfil its functions. It must therefore be able to rely upon the fact that its officers are always at its disposal for the safeguarding of public administration. . . . The freedom of civil servants to strike would stand in contradiction to their obligations based on their appointment. . . . They may not act in opposition to the will of the people . . . as it is expressed through the constitutional organs . . . by hindering the fulfilment of public functions in refusing to do their duty. Otherwise the public power itself would become entirely dependent upon the associations of civil servants."<sup>4</sup>

In the five years that have passed since these decisions were rendered, no change has been made in the position of the court on the question at issue. The literature of politics and public administration indicates a general agreement with the principle thus established, that the means which may be used by public officers to better their position do not include the right to strike. Since an attempt to strike would not only result in the loss of all rights as a consequence of disciplinary procedure, but would subject the strikers to coercion by means of the national army under the president's emergency power, it is to be anticipated that German public officers will henceforth refrain from the use of the strike, except possibly as an emergency measure or a counsel of despair, and will seek to bring about improvements in their status by securing the passage of appropriate legislation.

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MIRIAM E. OATMAN.

<sup>4</sup> *Entscheidungen des Reichsgerichts*, St. 56, pp. 419 ff.

**Bibliographical Notes on German State Government.** At the present time, there is an extensive literature dealing with the structure and functions of the eighteen German state governments.<sup>1</sup> For most of the states, one finds collections of laws and regulations, commentaries and manuals, state hand-books, statistical year-books, legal and administrative journals, together with other more or less fugitive publications. But among all this material, there are almost no comparative studies in state law, politics, and administration.

It may be worth while to suggest briefly a number of helps for the comparative study of German state government. Of the treatises on public law, the only one which deals exclusively with the states is Julius Hatschek's *Ausserpreussisches Landesstaatsrecht* (Berlin, 1926). This volume discusses and compares the governments of all the German states except Prussia and Waldeck.<sup>2</sup> The constitutions of ten of the more important states are printed as appendices, but the usefulness of the book is lessened by the complete omission of an index. Otto Meissner's *Das Staatsrecht des Reichs und seiner Länder* (2nd ed., Berlin, 1923) devotes considerable space to the states and is provided with a good index. It is now, however, somewhat out of date. Walter Jellinek's *Verfassung und Verwaltung des Reichs und der Länder* (Leipzig, 1925) is of little value for the purpose now under consideration, as it contains only thirteen pages on the states. Fritz Stier-Somlo's *Deutsches Reichs- und Landesstaatsrecht* (Vol. I, Berlin, 1924) is, of course, recognized as a standard work, but thus far only one volume has appeared. The second volume, dealing with the states, is not yet forthcoming. In consequence, there is today no single book which covers the entire field of contemporary German state government as is done for the American states in the works of Dodd, Mathews, and Holcombe.

Collections of official materials which include all the states are likewise relatively few in number. For the state constitutions, the one-volume collection edited by Otto Ruthenberg and entitled *Verfassungsgesetze des Deutschen Reichs und der deutschen Länder* (Berlin, 1926) is most useful. This work is both complete and authoritative. It contains the texts of the various constitutions as of February 1, 1926,

<sup>1</sup> Waldeck's recent decision to unite with Prussia will reduce the number of German states to seventeen. This decision takes effect in 1929.

<sup>2</sup> Prussia was omitted because it had already been covered in a previous work by Hatschek, *Deutsches und Preussisches Staatsrecht* (2 vols., Berlin, 1922, 1923).

and also includes the amendments which have been made since those constitutions were first adopted. Moreover, for each state there is a bibliography of official sources and secondary works; while comparative study is made easy by a serviceable index. Another valuable collection is *Die deutschen Landtagswahlgesetze*, edited by Walter Jellinek (Berlin, 1926). This gives the constitutional and statutory provisions governing the election of the legislatures, not only for the Reich and the German states, but also for Danzig and the Austrian and Swiss federal congresses. There is an excellent brief introduction on the subject of proportional representation, and also a good index. For the American student who wishes to make a study of German electoral methods, this work is indispensable. Professor Jellinek's collection is the first to be published in the series entitled *Staats- und Verwaltungsrechtliche Gesetze der deutschen Länder*. When the other volumes appear, this series will doubtless go far toward supplying convenient and accessible material for the comparative study of the German states.<sup>3</sup>

Of the numerous German legal and political science periodicals, the three of most value for state government are the *Archiv des öffentlichen Rechts*, the *Jahrbuch des öffentlichen Rechts der Gegenwart*, and *Reich und Länder*. The first two of these need no introduction to American students. In this connection, one need only say that both of them often contain valuable articles dealing with the development of governmental institutions in the several German states. The third, *Reich und Länder*, edited by Conrad and Raab, and published at Karlsruhe, is a new quarterly, the first issue of which appeared in May, 1927. It covers the whole field of state government, and also the relations of the Reich and the states. It is a scholarly and non-partisan periodical which aims to serve as a clearing house for the consideration of current state problems. Thus, the leading articles in the May number discussed various questions relating to the state budgets. Another regular feature is the state reports. Governmental developments in the larger states are reported upon twice a year, those in the smaller states once a year. For example, the reports in the August issue deal with legislative, administrative, and financial developments in Bavaria, Hesse, Lübeck, and Waldeck. Finally, mention should be made of the book reviews and extensive bibliographical

<sup>3</sup> There are also a number of legal collections on particular subjects, such as, for example, the collection now in preparation, *Die Polizeiverordnungen des Deutschen Reichs und der deutschen Länder*, edited by Falck, Menzel, and Hirschberg.

lists of newly published books and reports. In short, *Reich und Länder* may be described as a valuable aid to the comparative study of German state government.<sup>4</sup>

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<sup>4</sup> Other periodicals which may be mentioned as useful for the purpose under discussion are: *Deutsche Juristen-Zeitung*, which reports changes in administration and government day by day, and also publishes important articles from time to time; *Verwaltungsarchiv*, which frequently contains valuable articles on state government and administration; and *Juristische Wochenschrift*, particularly valuable for current happenings in the field of state government and the administration of justice. Attention should be called also to the following treatises: Hue de Grais, *Handbuch der Verfassung und Verwaltung*, 23 Auflage, 1926; Carl Dieckmann, *Verwaltungsrecht*, 1923; Hans Cuno, *Verwaltungsrecht und Verwaltungspraxis*, a set of small volumes devoted to Prussia, and particularly to Prussian finance; and the article by Dr. Erwin Jacobi on *Deutsches Staatsrecht (Reichs- und Landesstaatsrecht)* in Vol. 24 of *Enzyklopädie der Rechts und Staatswissenschaft*. (Ed.)

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## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

Professor William B. Munro, of Harvard University, has been appointed by the governors of the University of Toronto to deliver the Marfleet Foundation lectures at that institution during the current year. The Foundation provides for a series of three lectures, to be given triennially, on "some topic relating to the history or government of the United States or Canada."

Dr. Chester Lloyd Jones, recently American commercial attaché at Paris and formerly at Madrid, has been appointed to a professorship at the University of Wisconsin. He will offer courses on Latin American subjects, under the joint auspices of the economics and political science departments. Dr. Lloyd Jones was a professor of political science at the University of Wisconsin from 1910 to 1920, although on leave of absence after the autumn of 1917.

Professors Charles E. Merriam, Harold F. Gosnell, Jerome G. Kerwin, Carroll H. Woody, Rodney L. Mott, and Leonard D. White participated in an institute of politics which was held in Chicago in November and December in an attempt to discover a basis for the improvement of conditions of government in that city. The report of the institute was written by Professor Kerwin.

Professor Amos S. Hershey, chairman of the department of political science at Indiana University, is making a four-months' trip through Mexico, Central America, and the West Indies. Professor Hershey has in preparation a volume on American foreign policies.

Dr. Stanley K. Hornbeck, lecturer on Far Eastern history at Harvard University, has been appointed chief of the Far Eastern Division of the State Department in succession to Mr. Nelson T. Johnson, lately become Assistant Secretary of State.

Dr. Frank J. Goodnow has resigned the presidency of Johns Hopkins University, effective July 1, 1929, or earlier. He expects to do certain writing which he has long had in mind, and also to travel. He succeeded President Remsen in 1914, returning for the purpose from China, where he had been serving as constitutional adviser to the new republic.

Mr. Louis B. Wehle, 50 Broadway, New York City, has begun the preparation of a biography of the late Charles McCarthy and will be glad to receive materials that would be useful, especially such as relate to Dr. McCarthy's work in municipal government.

Mr. John T. Salter, formerly professor of political science at Ursinus College, Pennsylvania, has been appointed assistant professor of government and assistant director of the bureau of municipal research at the University of Oklahoma.

Mr. Wallace E. Robertson, Oklahoma Rhodes scholar, who recently completed three years' study at Oxford, receiving the degrees of B.A. in jurisprudence and B.C.L., has been appointed instructor in government at the University of Oklahoma.

Professor H. Duncan Hall has resigned his position in the School of Citizenship and Public Affairs at Syracuse University to become deputy chief of the social section of the League secretariat at Geneva. Professor Hall began his work at Syracuse last September, after having attended the Institute of Pacific Relations at Honolulu in July.

Professor Edgar J. Fisher, dean of Robert College, Constantinople, and professor of history in that institution, offered courses in international affairs at Syracuse University during the first half of the current academic year. He will lecture at Stanford University during the remainder of the year.

Professor K. C. Leebrick, of the University of Hawaii, has been granted leave of absence until the summer of 1929 and has accepted a temporary appointment on the staff of the School of Citizenship and Public Affairs at Syracuse University. Professor Leebrick began his work at Syracuse in January. He spent November and December in California making arrangements for the Institute of Pacific Relations, of which he is director.

Professor Pitman B. Potter, of the University of Wisconsin, will give courses in the international field during the coming summer session at the University of California at Los Angeles.

Mr. Charles H. Howland, formerly of the League of Nations Repatriation Commission for Greece and Albania, and Mr. Brooks Emeny, former Carnegie Endowment fellow, were recently appointed to teach international relations at Yale University.

Professor Harold F. Gosnell, of the University of Chicago, is engaged upon a study of the precinct committeemen of Chicago.

Professor Jerome G. Kerwin, of the University of Chicago, has been appointed director of research for the American Municipal Association, and is preparing a report to be presented at the November, 1928, convention of the International Union of Cities.

A bureau of municipal research and information has been organized at the University of Florida, with Professor W. W. Hollingsworth, of the department of history and political science, as director.

Changes in the department of government at Louisiana State University, of which Colonel A. T. Prescott, dean of the college of arts and science, is head, include the promotion of Associate Professor Charles W. Pipkin to the professorship of comparative government and the transfer of Mrs. Harriet M. Daggett to the Law School as assistant professor of law. Mr. Taylor Cole, formerly of the University of Texas, is instructor in government, and Messrs. R. L. Carleton and J. M. Coussons are teaching fellows.

The department of government at the University of Oklahoma has had a rapid growth in the past decade. Whereas prior to 1916 only one man was teaching the subject, in the current academic year the staff consists of two professors, one associate professor, four assistant professors, two instructors, and three graduate assistants. In 1926-27 there were twenty-three hundred and fifty-four enrollments in government courses.

The trustees of George Washington University, Washington, D. C., have announced a gift of \$1,000,000 to the University by the Supreme Council of the Scottish Rite Masons to establish a School of Government. The money is to be available immediately, and the new school will be in operation in the autumn of the present year.

The Cincinnati Bureau of Municipal Research has undertaken to outline a program for the revision of the financial procedure of the city administration, including budget, special assessments, and accounting. Messrs. William Watson, Philip Cornick, and A. E. Buck, of the National Institute of Public Administration, have been retained by the bureau to assist in this work.

Mr. Bruce Smith, of the National Institute of Public Administration, is making a study of rural justice in Illinois for the Illinois Association

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for Criminal Justice. The institute has recently completed a study of public utility taxation in Virginia. Mr. Clarence Heer was in charge of the work. The study of county government in Virginia made by the Institute at the request of Governor Byrd is shortly to be published. Copies may be obtained from Mr. J. H. Bradford, director of the budget, Richmond, Virginia.

Mr. Clarence E. Ridley has recently been added to the staff of the National Institute of Public Administration to fill the position of engineer made vacant by the resignation of Mr. William A. Bassett, who is now professor of municipal and industrial engineering at the Massachusetts Institute of Technology. Mr. Ridley is a graduate of the National Institute, and was city manager of Bluefield, West Virginia, for four years, and at one time vice-president of the City Managers Association. His doctoral dissertation at Syracuse University, "Measuring Municipal Government," has recently been published.

The fifth Institute under the Norman Wait Harris Memorial Foundation will be held at the University of Chicago, June 18-30. The Institute will be devoted to foreign investments, which will be studied from both the economic and the political point of view. As usual, there will be both public lectures and round tables. At least three eminent authorities from Europe on public finance, international trade, and foreign investments will be present. It is expected also that a number of prominent American authorities on the general subject will take part. Further information may be obtained from the executive secretary, Professor Quincy Wright, of the University of Chicago.

The eighth session of the Institute of Politics will be held at Williamstown, Massachusetts, August 2-30. Round tables and leaders have thus far been arranged for as follows: (1) The Problems of the Pacific, Professor George H. Blakeslee, Clark University; (2) Protection of Citizens Abroad, Professor E. M. Borchard, Yale University; (3) The Agricultural Surplus, Professor C. R. Fay, University of Toronto; (4) Latin America and Mexico, Dr. Leo S. Rowe, Pan-American Union; and (5) Social Readjustment through Voluntary Control, Mr. Graham Wallas, London School of Economics and Political Science. In addition to the round tables, general conferences will be arranged, including one on problems of Africa, to be conducted by Dr. Raymond L. Buell, of the Foreign Policy Association, New York City.

Announcement has been made of the incorporation of the Brookings Institution, in Washington, D. C., which will absorb the Institute for Government Research, the Institute of Economics, and the Robert Brookings Graduate School of Economics and Government. The two research institutes will continue to function as divisions of the new Institution. The Robert Brookings Graduate School will cease to exist. It is stated that a training function will be carried on in connection with the research work of the Institution, but it will not be the policy to grant degrees, except perhaps in unusual cases. It is planned to develop a center for visiting scholars to serve as a clearing house for information and to make the facilities of Washington more readily available.

Professor Cephas Daniel Allin, of the University of Minnesota, died after a short illness on October 23. He was born at Clinton, Ontario, August 12, 1874, and received his education in the Ontario public schools, the University of Toronto (A.B., 1897; LL.B., 1899), Harvard University (A.M., 1900), the University of Berlin (1903), and Oriel College, Oxford (1904). His teaching career, begun at Stanford (1902-03), was continued at Queen's University, Canada (1906-07), and closed with twenty almost unbroken years of splendid achievement at Minnesota (1907-1927). He saw summer school service also at such universities as Stanford, Colorado, Michigan, and Chicago. Always an indefatigable worker, he turned out an almost continuous series of monographs and articles on problems of the Australian commonwealth, on the Canadian constitution and Canadian relations with the United States, on the British dominions and the empire, and on special problems in international law. As chairman of his department since 1920, he devoted an infinite amount of pains to provisions for the welfare of his colleagues and to the selection of new men to fill the recurrent vacancies in a steadily increasing staff. Despite these incessant labors in scholarly and administrative capacities, however, he never lost his interest in students or his zest for teaching. His entrance to the classroom was unfailingly cheerful, and he never left it without having aroused his students' interest, clarified their thought, and created in them a sense of personal liking and respect for their instructor. He lived for his students, his friends, his family, his university, and the high cause of scholarship. It was his nature to give always without stint of himself and of his time. His own work ever seemed secondary while he gave patient ear and thought to the problems of a friend, a student, or even a casual acquaintance. None but those most intimately associated with him can

ever know how completely, cheerfully, and courteously he sacrificed himself for the welfare of others. W.A.

The annual report of the American Council of Learned Societies for 1927 contains the following items (among others) of interest to political scientists: (1) the Dictionary of American Biography, under the editorship of Dr. Allen Johnson, is progressing satisfactorily, and the first volume will be published in 1929; (2) the report of the survey of humanistic and social research, conducted by Professor Frederic A. Ogg, is to be published by the Century Company in February of the present year; (3) a list of the serial publications of foreign governments is being compiled under the joint auspices of the Council, the American Library Association, and the National Research Council and is expected to be ready by 1930; (4) the survey of learned societies, conducted by Dr. Waldo G. Leland, permanent secretary of the Council, will probably be completed during the current year; (5) a committee on linguistic and national stocks in the United States, Professor Walter F. Willcox, chairman, has begun preliminary studies of the population of the United States in 1790; and (6) the committee on grants in aid of research, Dean Guy Stanton Ford, chairman, will administer a fund of the same proportions (\$5,000) as in former years. The Council has established executive offices at 907 Fifteenth St., Washington, D. C.

At the December meetings of the learned societies in the field of the social sciences it was announced that, in pursuance of a plan prepared by a committee of the Social Science Research Council, the Laura Spelman Rockefeller Memorial Foundation has pledged a subvention of half a million dollars for the establishment and maintenance of a journal devoted to the presentation of abstracts of books and articles, American and foreign, in the fields of history, economics, political science, sociology, anthropology, and human geography. A project long under consideration is thus happily brought to the point of realization, under conditions which, in the judgment of the committee, will be entirely adequate to the purpose. A committee of organization has been appointed by the Social Science Research Council, as follows: Professor F. Stuart Chapin, University of Minnesota, chairman, representing sociology; Professor Carlton J. H. Hayes, of Columbia University, representing history; Professor Davis R. Dewey, of the Massachusetts Institute of Technology, representing economics; Professor Frederic A. Ogg, of the University of Wisconsin, representing political science; Dr. Clark Wissler, of the American Museum of Natural History,

representing anthropology; and Dr. Isaiah Bowman, of the American Geographic Society, representing geography. This board is to be assisted by a larger advisory council representing the various fields. The representatives of political science in this connection are Professors William Anderson, of the University of Minnesota, Charles G. Fenwick, of Bryn Mawr College, and Walter J. Shepard of the Brookings Graduate School.

At the thirty-third annual meeting of the National Municipal League, held at New York on November 10-11, in conjunction with the Governmental Research Conference and the National Association of Civic Secretaries, round tables were organized on budget procedure, special assessments, state supervision of local finances, executive allotments as a means of budget control, the "slacker vote," public opinion, misconceptions concerning crime, improving college courses in municipal government, and university training for public service. Round-table chairmen included Professors M. B. Lambie, Clyde L. King, and Thomas H. Reed, and Messrs. Lent D. Upson and C. A. Dykstra. Papers were given by (among others) Professors Raymond Moley, William B. Munro, Samuel C. May, A. C. Hanford, and H. A. Overstreet, and Messrs. C. E. Rightor, Philip Zoercher, and Bruce Smith. Hon. Frank L. Polk retired as president of the League and Mr. Richard S. Childs was elected to the office.

The sixteenth annual meeting of the Governmental Research Conference was held at the Bar Association Building, New York City, November 9-11. Seventy-two persons, representing thirty-seven research organizations of the United States and Canada, were registered. On November 9 the conference met alone, and after an address of welcome by Dr. Luther Gulick, chairman, the forenoon session was devoted to a discussion of current work and publicity methods of the research bureaus. A luncheon at the New York City Club was featured by an address by Mr. Robert Fulton Cutting, chairman of the board of trustees of the New York Bureau of Municipal Research and the National Institute of Public Administration. Dr. Gulick presented a statement of the accomplishments and discouragements in municipal government during the past year, and the progress made in the organization of new research agencies. The afternoon session was marked by an address on "Fallacies and Foibles of the Research Movement," by Mr. Francis G. Oakey, of Searle, Oakey, and Miller, New York. This address was followed by a general discussion. On November 10-11 the

conference joined with the National Municipal League in round-table sessions. A complete report of the convention was published early in January in the annual *Proceedings* of the Conference, copies of which may be obtained from Mr. Russell Forbes, secretary of the Conference, 261 Broadway, New York. The executive committee for 1928 is composed of Messrs. William C. Beyer, Luther Gulick, Lent D. Upson, Walter Matscheck, Stephen B. Story, and Russell Forbes. Dr. Gulick is chairman and Mr. Beyer vice-chairman.

A gift of \$50,000 has been received by the Detroit Bureau of Governmental Research from an anonymous donor to finance a project of the International Association of Chiefs of Police for developing a uniform classification of crimes and uniform reporting of offenses throughout the country. Police Commissioner William P. Rutledge, of Detroit, is chairman of the committee on the standardization of police crime records which will have charge of the new work. Other members of the committee include Chief Joseph A. Gerk of St. Louis, Chief Jacob Grauel of Cleveland, Chief James Higgins of Buffalo, Chief L. V. Jenkins of Portland, Oregon, Chief Thomas Healy of New Orleans, Supt. Michael Hughes of Chicago, and Chief August Vollmer of Berkeley, Cal. It is expected that the study will furnish not only a means of measuring the effectiveness of police activity, but, more particularly, a basis of diagnosing and attacking at the source the social causes of crime, and will constitute a first step in crime prevention. An advisory committee is to be appointed to coöperate with the police chiefs' committee, so that the crime statistical collection work of the latter will be correlated with work now being undertaken or proposed with regard to judicial and penal statistics. Dr. Lent D. Upson will be chairman of this committee, which will include representatives of the Census Bureau, the Department of Justice, and the American Institute of Criminal Law and Criminology, besides several widely known penologists. Mr. Bruce Smith, of the National Institute of Public Administration, who has had more than ten years of practical experience with police problems, and who has written extensively on the subject, has been named general director of the work.

The 1928 session of the Geneva School of International Studies will open on July 10 and continue to the close of the meeting of the League Assembly. The School is planned to meet the needs of four distinct groups of students: (1) Professor Alfred Zimmern will hold daily a two-



hour seminar with a group of advanced students. The number admitted will be limited to twenty. Each applicant will be required to submit to Professor Zimmern an essay on American foreign policy. (2) There will be a "coördination" course, open to students of third-year standing and over at European universities, and to graduate students at non-European universities. This will include lectures in English and French on (a) the culture and institutions (including the educational system) of individual countries, (b) the foreign policy of individual countries, and (c) general international problems. Each lecture will be followed by discussion. Regular attendance will be required. (3) There will be a "contact" course, open to all university students and to other persons interested in international relations, covering the same ground in a simpler manner, also including discussion. (4) In addition, special courses will be arranged for teachers, dealing with the international aspect of educational problems. During the session of the Assembly there will be a daily commentary by Professor Zimmern and an evening meeting consisting of a lecture by an Assembly delegate, followed by discussion. Inquiries should be addressed to Professor Zimmern at 23 bis Rue Balzac, Paris, France, or to the Geneva School of International Studies, 366 Madison Avenue, New York City.

**Annual Meeting of the American Political Science Association.** The twenty-third annual meeting of the Association was held at the Mayflower Hotel, Washington, D. C., December 28-30, 1927. The registration was 292, as compared with 157 at the St. Louis meeting of 1927. In session at the same time and place were the American Economic Association, the American Statistical Association, the American Association for Labor Legislation, the American Farm Economic Association, the American Association of Collegiate Schools of Business, the American Association of University Instructors in Accounting, the National Association of Teachers of Marketing and Advertising, the American Sociological Society, the National Community Center Association, the National Association for the Study of Educational Sociology, the American Historical Association, the Mississippi Valley Historical Association, the American Catholic Historical Association, the Agricultural History Society, and the Bibliographical Society of America.

The program followed the general form of the past three years. As arranged by the program committee, under the chairmanship of Professor Walter J. Shepard, it was as follows:

## WEDNESDAY, DECEMBER 28

## 10:00 A. M. Round Table Meetings.

1. *The Legislative Process as Illustrated by the McNary-Haugen Farm Relief Bill.*

Director, Frederic P. Lee, Legislative Counsel, U. S. Senate.

Sub-topic: *The Sources of Legislative Policies.*

Charles J. Brand, National Fertilizer Association; George N. Peek, Executive Committee of Twenty-two of the North Central States Agricultural Conference.

2. *The Diplomatic Process.*

Director, Jesse S. Reeves, University of Michigan.

Sub-topic: *The Work of the State Department and the Foreign Service.*

Hon. Wilbur J. Carr, Assistant Secretary of State; Rear-Admiral William L. Rodgers, Washington, D. C.

3. *Federal Relations.*

Director, Arthur W. Macmahon, Columbia University.

Sub-topic: *State Participation in the Administration of National Laws.*

John E. Benton, National Association of Railroad and Utilities Commissioners; J. J. Britt, Bureau of Prohibition; Ass't Surgeon General W. F. Draper, U. S. Public Health Service; W. S. Frisbie, U. S. Department of Agriculture; W. C. Henderson, U. S. Biological Survey; and Lloyd S. Tenny, U. S. Department of Agriculture.

4. *Problems of Public Administration.*

Director, W. F. Willoughby, Institute for Government Research.

Sub-topic: *Problems of Personnel Administration.*

George Russell Wales, U. S. Civil Service Commission.

5. *The Government and the Press.*

Director, Robert D. Leigh, Williams College.

Sub-topics: *Methods of Reporting Washington News: Criticism of the Newspapers for Reporting Governmental Affairs; The Conspiracy Theory.*

## 12:30 P. M. Subscription Luncheon

Chairman, William Bennett Munro, Harvard University, President of the American Political Science Association.

Address: *The Reporting of Political News.* David Lawrence, *The United States Daily.*

## 2:15 P. M. Session on Revolution and Democracy in Central Europe.

Chairman, Francis W. Coker, Ohio State University.

*The Crisis of Social Democracy in Central Europe.*

Oscar Jászi, Oberlin College.

*The German Presidency in Theory and Practice.*

Elmer D. Graper, University of Pittsburgh.

*Revolutionary Changes in European Local Government.*

Josef Redlich, Law School of Harvard University.

Discussion: Carl J. Friedrich, Harvard University.

## 3:00 P. M. Meeting of Executive Council and Board of Editors.

## 8:15 P. M. Joint Session with American Historical Association for Presidential Addresses.

Presiding officer, Hon. Hiram Bingham, U. S. Senator from Connecticut.

Award of Prizes of American Historical Association.

Annual Address of the President of the American Historical Association:  
*A Layman's View of History.*

Henry Osborn Taylor.

Annual Address of the President of the American Political Science  
Association: *Physics and Politics: An Old Analogy Revised.*

William Bennett Munro.

#### THURSDAY, DECEMBER 29.

##### 10:00 A. M. Round Table Meetings

###### 1. *The Legislative Process.*

Director, Frederic P. Lee.

Sub-topic: *The Framing of Legislation.*

Ellsworth C. Alvord, Special Legislative Assistant to the Secretary of  
the Treasury.

###### 2. *The Diplomatic Process.*

Director, Jesse S. Reeves, University of Michigan.

Sub-topic: *Open and Secret Diplomacy.*

Henry Kittredge Norton, Irvington, N. Y.; Roland S. Morris, Phila-  
delphia.

###### 3. *Federal Relations.*

Director, Arthur W. Macmahon, Columbia University.

Sub-topic: *Subsidies: the Actual Operation of Federal Aid.*

A. F. MacDonald, University of Pennsylvania; Grace Abbott, Chil-  
dren's Bureau; Thomas H. MacDonald, Bureau of Public Roads;  
J. G. Peters, United States Forest Service; M. C. Wilson, Agricultural  
Extension Service; J. C. Wright, Federal Board for Vocational  
Education.

###### 4. *Problems of Public Administration.*

Director, W. F. Willoughby, Institute for Government Research.

Sub-topic: *Administrative Reorganization: National Government.*

L. W. Wallace, American Engineering Council.

###### 5. *The Government and the Press.*

Director, Robert D. Leigh, Williams College.

Sub-topic: *The Yokel Theory.*

##### 12:30 P. M. Subscription Luncheon.

*Training for Citizenship.*

Chairman, Robert C. Brooks, Swarthmore College.

*The By-Products of Political Science.*

James T. Young, University of Pennsylvania.

*Civic Education in Great Britain.*

John M. Gaus, University of Wisconsin.

Discussion: Charles E. Martin, University of Washington.

##### 2:15 P. M. General Session.

*Federal Administration and Judicial Control.*

Chairman, Isidor Loeb, Washington University.

*The Place of the Independent Commission in the Federal Government.*

Joseph B. Eastman, Interstate Commerce Commission.

*Judicial Control of Official Discretion in Anglo-American Law.*

John Dickinson, Princeton University.

Discussion: S. C. May, University of California.

## 4:15 P. M. Annual Business Meeting of the Association.

Presiding Officer: William B. Munro, Harvard University.

Annual Reports of the Secretary-Treasurer and of the Managing Editor of the *American Political Science Review*. Reports of committees and election of officers for 1928.

## 7:00 P. M. Annual Dinner, jointly with the American Historical Association, Mississippi Valley Historical Association, American Catholic Historical Association, and Agricultural History Society.

Presiding Officer: Herbert Putnam, Librarian of Congress.

Speakers: Vincent Massey, Canadian Minister to the United States; Herbert Hoover, Secretary of Commerce; Albert C. Ritchie, Governor of Maryland; Frederick P. Keppel, President of the Carnegie Corporation of New York.

## FRIDAY, DECEMBER 30

## 10:00 A. M. Round Table Meetings.

1. *The Legislative Process.*

Director, Frederic P. Lee.

Sub-topic: *The Parliamentary Consideration of Legislation.*

L. J. Dickinson, Member of Congress from Iowa, and Chester C. Davis, Consultant Agricultural Economist.

2. *The Diplomatic Process.*

Director, Jesse S. Reeves.

Sub-topic: *The Procedure of International Conferences.*

W. W. Willoughby, Johns Hopkins University; James Brown Scott, Washington, D. C.

3. *Federal Relations.*

Director, Arthur W. Macmahon.

Sub-topic: *Agreements, Contracts, and Compacts between Nation and States and among States.*

Elwood Mead, U. S. Commissioner of Reclamation; O. C. Merrill, Federal Power Commission; H. Goding, United States Bureau of Animal Industry.

4. *Problems of Public Administration.*

Director, W. F. Willoughby.

Sub-topic: *Administrative Reorganization: State Government.*

W. H. Edwards, University of North Dakota.

5. *The Government and the Press.*

Director, Robert D. Leigh.

Sub-topic: *The Complexity Theory.*

## 12:30 P. M. Luncheon Session.

Chairman, William B. Munro, Harvard University.

Address: *The Political Consequences of the Mexican Revolution.*

Frank Tannenbaum, Institute of Economics.

Discussion: Graham H. Stuart, Stanford University.

**2:15 P. M. General Session.***Some Major Problems of Political Research.*

Chairman, Benjamin F. Shambaugh, Iowa State University.

*A Survey of State and Local Governments in Virginia.*

A. E. Buck, National Institute of Public Administration.

*The Investigation of the Indian Bureau and Indian Administration.*

Lewis Meriam, Institute for Government Research.

*A Scientific Study of the Administration of Justice.*

Raymond Moley, Columbia University.

The Executive Council and Board of Editors received the report of the Secretary-Treasurer on the membership and finances of the Association. The report may be summarized as follows:

**A. REPORT ON MEMBERSHIP, DECEMBER 15, 1926, TO DECEMBER 15, 1927**  
(WITH COMPARATIVE STATISTICS)

**I. Total Membership**

December 15	Annual Members	Life Members	Total
1916.....	1499	48	1547
1917.....	1464	54	1518
1918.....	1278	54	1332
1919.....	1257	53	1325
1920.....	1256	53	1309
1921.....	1304	57	1361
1922.....	1391	59	1450
1923.....	1416	55	1471
1924.....	1469	52	1521
1925.....	1511	52	1563
1926.....	1532	54	1586
1927.....	1614	52	1666

**II. Accessions and Cancellations**

	Accessions	Cancellations	Net Loss	Net Gain
1916.....	195	110		85
1917.....	125	154	29	
1918.....	65	138	73	
1919.....	68	143	75	
1920.....	96	118	22	
1921.....	173	132		41
1922.....	198	111		87
1923.....	163	138		25
1924.....	180	130		50
1925.....	166	124		42
1926.....	124	103		21
1927.....	150	70 (68 annual, 2 life)		80

B. REPORT ON FINANCES FOR THE FISCAL YEAR DECEMBER 15, 1926, TO  
DECEMBER 15, 1927.

*Balance Sheet—December 15, 1927.*

*Resources*

Cash in Bank—Per Bank Statement.....	\$1,593.95	
Less Checks Outstanding.....	186.48	
Cash on Hand—Bank.....	\$1,407.47	
Petty Cash.....	1.49	\$1,408.96
Savings Account.....		771.15
Investments.....		1,200.00
Accounts Receivable.....		1,280.00
Total.....		\$4,660.11

*Liabilities and Surplus*

Dues and Contributions Advanced.....	\$ 891.50
Surplus of Association.....	3,768.61
	\$4,660.11

*Operating Account*

*Statement of Receipts and Disbursements*

Balance on Hand—December 15, 1926.....	\$2,155.27
Receipts in 1927:	
Dues for 1927 and Prior Years.....	\$5,031.20
Special Contributions—1927.....	748.50
Dues and Special Contributions Advanced.....	891.50
Sale of Publications.....	494.11
Advertising.....	387.30
Sale of Index.....	92.00
Total Receipts.....	7,644.61
Total Cash Available.....	\$9,799.88
Less Checks Returned by Bank.....	38.25
	\$9,761.63
Payments in 1927:	
Review—Printing.....	\$4,282.15
Review—Reprints, Postage, etc.....	396.63
Managing Editor's Expenses.....	507.80
Managing Editor—Travel.....	57.50
Honorariums.....	237.00
Secretary and Treasurer—Cler. & Stenog.....	580.70
Secretary and Treasurer—Stat., Print., & Postage.....	373.32
Secretary and Treasurer—Travel.....	35.90
Secretary and Treasurer—Miscellaneous Expenses.....	104.66
Dues—American Council of Learned Societies.....	78.15

*Miscellaneous Expenses .....	760.61	
Index Cost .....	932.24	
Equipment .....	7.50	
		<hr/>
	\$8,354.16	
Less Petty Cash .....	1.49	
		<hr/>
Total Payments .....		8,352.67
		<hr/>
Balance on Hand—December 15, 1927 .....		\$1,408.96
Consisting of:		
Bank Balance .....	\$1,407.47	
Petty Cash .....	1.49	
		<hr/>
		\$1,408.96
		<hr/>
*Includes special expenses this year:		
Contributions to the Encyclopaedia of the Social Sciences .....	\$500.00	
Mailing circulars, Encyclopaedia of the Social Sciences .....	54.90	
Expense, Policy Committee .....	125.79	
		<hr/>
Total .....		\$680.69

Estimates presented for the fiscal year 1928 showed a total balance and receipts of \$9,308.96, disbursements aggregating \$8,082.72, and a balance December 15, 1927, of \$1,226.24. This estimate did not take into account any increases of expenditure which might be authorized by the Executive Council.

The Treasurer's accounts were referred to an auditing committee consisting of Professors Isidor Loeb and S. Gale Lowrie, which reported that the books and records of the Association had been audited by Payton and Ross, public accountants, and which certified that the statements submitted by the Secretary-Treasurer had been accurately drawn from the records.

The most significant business to come before the Association was the report of the Committee on Association Policy, which was presented by Professor Thomas H. Reed, chairman. Professor Reed reported that the Carnegie Corporation had made an appropriation of \$7,500 to enable the committee to conduct a program of self-study to ascertain what the American Political Science Association might do to further and improve the work of political science in its various phases. Professor Reed stated that the work of investigation had been divided among the various members of the committee and requested that the committee

be continued in office for another year. The Association accepted Professor Reed's report and voted that the committee should continue with the following members: Professors C. A. Beard, W. B. Munro, F. A. Ogg, C. E. Merriam, W. F. Willoughby, J. A. Fairlie, E. W. Crecraft, R. M. Story, and T. H. Reed, chairman. It was understood that the President and Secretary-Treasurer would work with the committee ex-officio.

Professor Frederic A. Ogg, managing editor of the *American Political Science Review*, reported that the Board of Editors had remained unchanged throughout the year, except for the heavy loss suffered by the death of Professor Victor J. West in February. Professor West was succeeded on the Board by Professor Clyde L. King. Professor Lindsay Rogers resigned at the end of the year, and Professor Arthur W. Macmahon was elected as his successor. No further changes were made in the membership of the Board for 1928, and the body therefore consists of Professors C. A. Berdahl, Robert E. Cushman, John A. Fairlie, A. C. Hanford, Clyde L. King, Arthur W. Macmahon, Thomas H. Reed, Walter J. Shepard, Bruce Williams, and W. W. Willoughby, with Professor Frederic A. Ogg as managing editor.

Announcement was made that under a grant of \$500,000 from the Laura Spelman Rockefeller Foundation the Social Science Research Council will undertake the publication of a *Journal of Social Science Abstracts*, which will correspond, in the field of the social sciences, to sundry journals of abstracts in the fields of the natural sciences. Announcement was made also that Professor Frederic A. Ogg had been appointed by the Social Science Research Council to represent the interests of political science on the board of organization and management; and, on nomination of Professor Ogg, Professors William Anderson, Charles G. Fenwick, and Walter J. Shepard were designated by the Association as members of a larger advisory committee which is to be formed.

Professor John A. Fairlie, the representative of the Association on the board of directors of the *Encyclopaedia of the Social Sciences*, reported that funds had been raised in sufficient amount to make certain the publication of the Encyclopaedia. A board of directors has been chosen, Professor E. R. A. Seligman has been appointed editor-in-chief; and Dr. Alvin Johnson has been made assistant editor.

At the luncheon session of December 28, brief memorial statements regarding the late Professor Victor J. West and the late Professor Cephas D. Allin were made, respectively, by Professors Graham H. Stuart and William Anderson.



Officers of the Association were elected for 1928 as follows: president, Professor Jesse S. Reeves, University of Michigan; first vice-president, Professor A. N. Holcombe, Harvard University; second vice-president, Professor F. W. Coker, Ohio State University; third vice-president, Professor C. G. Haines, University of California at Los Angeles; secretary-treasurer, Professor J. R. Hayden, University of Michigan. The newly elected members of the Executive Council for the term expiring December, 1930, are Professors R. E. Cushman, Cornell University; W. Y. Elliott, Harvard University; Ellen D. Ellis, Mt. Holyoke College; A. R. Hatton, Northwestern University; and C. W. Pipkin, Louisiana State University.

Announcement was made that the American Historical Association had voted to hold its annual meeting for 1928 in Indianapolis, and although no action as to the place of meeting of the American Political Science Association was taken by the Executive Council, it was thought probable that the Association would meet in Indianapolis in 1928.

J. R. HAYDEN, *Secretary*.

**International Aspects of Political Science.** The student of international law and diplomacy is always abundantly provided with international meetings of many sorts, ranging from the sessions of the League of Nations and the World Court to relatively important unofficial congresses. The events of the summer of 1927 seem to indicate that not only must the international lawyer construct his budget to allow for periodic expeditions to Europe, but also the political scientist interested in public law, public administration, and municipal government. A notable series of summer congresses included the Third International Congress of the Administrative Sciences (*Congrès International des Sciences Administratives*), the first session of the International Institute of Public Law (*Institut International de Droit Public*), the annual Institute of Public Administration, conducted by the (British) Society of Civil Servants, the Third International Congress on Scientific Management, the second biennial convention of the International Federation of Civil Servants and Teachers, and an important meeting of the executive committee of the *International Union of Cities and Local Authorities*. Each of these meetings is referred to briefly in the following paragraphs.

In point of time comes first the International Congress of the Administrative Sciences, whose second convention (in 1923) was reported upon in the *Review* (Vol. XVIII, p. 384). The recent congress was held

in Paris June 21-24, under the direction of a committee guided by the distinguished dean of the faculty of law of the University of Paris, M. Henri Berthélemy. Delegations from substantially every European state, from Japan and China, from several Central and South American countries, and from the United States joined in the discussion of administrative problems. Among the delegates may be noted, from France, Professor Berthélemy, the venerable Professor Duguit, Professor Jèze, Professor Rolland, M. André Lefas, the son of the well-known author of *L'État et les Fonctionnaires* and himself a member of the Council of State, and M. Henri Fayol, son of the late Henri Fayol, whose presence dominated the preceding congress at Brussels. From Belgium came a numerous delegation, including M. de Vuyst, secretary-general of the Congress, and M. Heyvaert; from Spain, Count Torre Velez, the president of the Congress, and Professor Gascon y Marin, of the University of Madrid; from Rumania, Professor Negulesco, director of the Rumanian Institute of Public Law and editor of the *Revista de Drept Public*; from Switzerland, Professor Roger Calame, of the University of Basle; from England, Mr. G. Montagu Harris, director of foreign intelligence in the ministry of health. The delegation from the United States included Dr. Luther Gulick, Dr. Harold W. Dodds, Mr. I. C. Brower, city manager of Lima, Ohio, Mr. Royden J. Dangerfield, and Professors John A. Fairlie, Walter R. Sharp, Lindsay Rogers, and Leonard D. White. The total attendance was approximately two hundred.

The work of the Congress was carried on in five round tables, devoted respectively to local government, intermediate administrative areas, national administration, bibliography, and personnel management. A prepared agenda was at hand to guide each round table, and at the close of the discussions each prepared a series of resolutions which were approved at a final plenary session.

Space will not permit elaboration of these resolutions, but they may be summarized to indicate the type of problems which engaged the attention of the congress. The round table on local government encouraged the formation of municipal associations and conferences and demanded the greatest possible degree of home rule, economic, administrative, and political. On the difficult question of division of tax resources between state and city, it urged the advisability of abundant local revenues, but admitted the principle of state subventions, and insisted on celerity in those cases in which local budgets are subject to central approval. It advised elected municipal officials to recognize

the initiative and experience of the technical staffs, and it recommended an international agency to deal with vital statistics.

The second round table advocated woman's suffrage for local assemblies, associations of cities and departments or provinces, the extension to other countries of legislation similar to the French laws on tourists, and the protection of natural sites, especially against the billboard nuisance. The third round table recommended the advisability of an administrative body similar to the French council of state, advocated the general adoption of the Rumanian law authorizing the courts to require administrative officials to submit papers, and favored an autonomous organization along the lines of private corporations for publicly-owned utilities. This round table proposed three questions for consideration in 1930: (1) the collaboration of the Council of State with the legislative body in the preparation of legislation, (2) the desirability of organizing an autonomous administrative jurisdiction, as in France or Italy; (3) the means of executing judicial decisions against the state.

The fourth round table, dealing with bibliography, urged close collaboration with the League of Nations Committee on Intellectual Coöperation, and recommended study of the legal status of international associations not for profit. The fifth round table, which was the theater of lively differences of opinion on the rights of civil servants, voted a series of propositions with regard to the status of the *fonctionnaire*. These statements stressed the necessity of sound general, as well as professional, training; the authority of the bureau chiefs and department heads; prohibition of strikes; the existence of a science of administration, among whose laws is that of unity of command, which should eliminate the interference both of parliamentarians and trade unions; the importance of scientific management, and the extension of the use of office machines; and, finally, the mutual interest of the public and officialdom in improving the public service. This committee also proposed questions to be studied for the next congress: the general and professional training of public officials, the authority and responsibility of department heads, the "natural laws" of administrative science, and the improvement of administrative methods.

This congress marks the definite reestablishment of an institution first organized in 1911, whose existence was interrupted by the World War, but which now has brought together delegations from all nations. It was a particularly impressive moment when the Austrian delegate paid homage to the intellectual leadership of France in an eloquent

speech delivered in perfect French. The Congress is of interest also because it brings out the remarkable uniformity of the pattern of administrative problems the world over. Although it will become more significant as greater attention is paid to the preliminary work of organization, it is today of real significance as a *foyer* at which meet students and practitioners of administration the world over. The Congress has printed a *Rapport Général* and a statement of the *Voeux*, both of which may be obtained from M. Lesoir, *Directeur au Ministère de l'Interieur*, Brussels. The next meeting of the Congress will be held in 1930 at Madrid.

Immediately at the close of this congress was held the first meeting of the *Institut International de Droit Public*. The purpose of this organization is "scientific work in the field of public law and political science, the theoretical examination of different problems of public law, the elaboration of methods, the declaration of general principles, the comparison and evaluation of different national doctrines, in view of the development of individual liberty by means of legal principles in free countries." A distinguished group of students of public law gathered at the faculty of law of the University of Paris, June 26, to applaud the opening address of the president, Professor Gaston Jèze, including Professors Berthélemy, Duez, Duguit, Fairlie, Gascon y Marin, Gronski, Laferrière, Mestre, Mirkine-Guetzévitch, Negulesco, Baron Nolde, Politis, Rolland, and White.

The session was devoted chiefly to the selection of subjects on which reports will be presented at the next meeting of the Institute, in June, 1928, at Paris. These subjects include: (1) the theoretical and practical value of the principle of separation of powers and its application in the public law of modern states (M. Redlich); (2) the crisis of representative governments and of parliaments in modern democracies (Lowell); (3) the scope of rules of constitutional law for the negotiation and ratification of treaties (Politis and Schücking); (4) the legal sanction of constitutional principles (Kelsen); (5) the rule of law and objective law (Duguit); (6) the legal significance of public liberties (Jèze). Associated with each of these subjects is a committee, the members of which collaborate in the preparation of the report. Students of public law will await the first series of reports with much anticipation. Communications concerning the Institute may be addressed to Professor Gaston Jèze, Faculty of Law, University of Paris.

The Institute of Public Administration, founded by a group of English civil servants, holds an annual summer conference, alternating between

Oxford and Cambridge. The 1927 conference was held at Trinity College, Cambridge, with Sir John Anderson, G.C.B., permanent under-secretary of the Home Office in the chair. These conferences are perhaps at the present moment the most significant of their kind. The membership of the conference is drawn almost wholly from the civil service and the higher branches of the municipal service, over a hundred persons gathering this year for the four-days' session. The Institute welcomed at the 1927 conference an imposing delegation headed by Kammerherr Clan from the Danish civil service, which returned an official visit by the Institute to Denmark in 1926. In addition, Dr. H. W. Dodds, Dr. Luther Gulick, and Professors Fairlie and White were in attendance.

The conference technique of the Institute is full of interest. The program is worked out well in advance, and formal papers are not only submitted and printed, but are distributed and taken as read when the conference assembles. This eliminates the necessity of reading the papers and permits immediate discussion. Any person desiring to speak sends up his name to the chairman, who calls upon such volunteers in order. Toward the close of each session, an informal time limit is imposed. The author of the paper under discussion sits with the chairman and is allowed ten minutes at the close of the meeting to discuss the issues raised by the debate. The chairman usually concludes with observations which bind together the paper and the discussions into a coherent unit. The 1927 conference was singularly fortunate in the choice of its chairman, Sir John Anderson, whose illuminating description of the relations between the minister and the permanent secretary will not soon be forgotten by his audience.

The conference dealt successively with five topics: administrative aspects of social insurance; the respective spheres of public authorities and voluntary organizations in the administration of social services; the powers of public departments to make rules having the force of law; the place of finance departments, committees, and officers in administrative control; and officials and policy. No American student of administration will fail to appreciate the importance of these subjects. The papers presented at the conference are contained in the October, 1927, issue of *Public Administration*. The next conference will be held at Oxford, presumably in the month of July, 1928. The honorary secretary, Mr. H. G. Corner, may be reached at Palace Chambers, Bridge Street, Westminster, London.

The International Congress of Scientific Management held its first meeting at Prague in 1924, its second at Brussels in 1925, and its third

at Rome, September 5-9, 1927. Dr. H. S. Person, of the Taylor Society, is secretary of the Committee on American Participation in International Management Congresses, and may be reached at Room 611, West 39th Street, New York City. From the outset, American influence has been strong in these congresses, and the Rome meeting proved to be no exception. Fourteen papers were presented by the American delegation, those of chief interest to political scientists being: "The Management of Railroads in the United States since 1920," by John H. Gray, of the Interstate Commerce Commission; "Reorganization of the Governments of the States of Illinois, Pennsylvania, and New York," by Professor Clyde L. King; and "Scientific Management in Municipal Government," by Professor Leonard D. White.

The Congress was organized in four round tables, dealing respectively with industries and trade in industrial products; agriculture and trade in soil products; public services and public utilities; and domestic economies. Papers were written in Italian, French, English, German, or Spanish, and were printed prior to the sessions. Summaries were prepared in French, English, and Italian. The importance attached to scientific management in Italy is indicated by the fact that Premier Mussolini consented to act as president of the honorary committee of the congress, which was held under the patronage of His Majesty the King of Italy.

The governing body of the International Union of Cities and Local Authorities met during the summer in Berne to prepare for the forthcoming congress to be held at Seville next October. Elaborate preparations are being made for this congress, which bids fair to be the most important yet held. Three major subjects will be under discussion, i.e., the financial organization of local authorities, municipal utilities, and eminent domain. With regard to each of these, extensive reports are to be published prior to the date of meeting. Material to be organized in a systematic way by a central committee is now being gathered in each affiliated country. For the United States, the American Municipal Association is the affiliated body. Professor Jerome G. Kerwin, of the University of Chicago, has been appointed director of research for this Association.

The International Federation of Civil Servants and Teachers held its second biennial congress at Nuremberg September 17-20. This Federation includes representatives from the English Civil Service Confederation (now withdrawing on account of section five of the Trade Disputes Act), the Allgemeiner Deutsche Beamtenbund, the

Fédération Nationale des Syndicats de Fonctionnaires, and similar groups in Austria, Holland, Yugoslavia, Czechoslovakia, and the Irish Free State, the delegates representing about 450,000 civil servants and teachers. In addition to the secretary-general, F. S. Noordhoff of Holland, one noted as leading figures Llewellyn of England, Laurent of France, and Falkenberg of Germany. Dr. Maier, secretary of the I.P.T.T., attended, as well as Professor Lederer, of the University of Heidelberg.

The interests of this federation are primarily economic. At a preliminary conference in Vienna, July 2-3, 1923, "the groups represented agreed to declare that this projected organization should place itself on the territory of syndicalist principles, to wit, recognizing the necessity of a most absolute and a most active solidarity of those who work for a salary. The conference is of opinion that no moral, economic, or social aims can be attained but by the struggle against the international capitalistic powers, and declares that the foundation of an international organization of civil servants may be considered as a most efficacious weapon."

In spite of this declaration, one need not understand the federation to harbor a revolutionary program. The second congress was given over largely to the report of the secretary-general, to a great public meeting which developed into a riot between the nationalist and socialist wings of the audience, and to a trip to Rothenburg. The federation is full of interest to students of public administration who follow the development of the trade-union movement in the civil and municipal service. Its headquarters are at 10 Emmapark, The Hague, Holland, where it publishes a useful monthly bulletin.

LEONARD D. WHITE.

*University of Chicago.*

## BOOK REVIEWS

EDITED BY A. C. HANFORD

*Harvard University*

*The Social Sciences and their Interrelations.* By WILLIAM F. OGBURN AND ALEXANDER GOLDENWEISER. (Boston: Houghton Mifflin Company. 1927. Pp. 506.)

*Recent Developments in the Social Sciences.* By CHARLES A. ELLWOOD AND OTHERS. (Philadelphia: J. B. Lippincott Company. 1927. Pp. vii, 427.)

The purpose of the first of these volumes is to present an "integral picture" of the social sciences. Its chapters run the gamut from anthropology to education and back again. Seven of them deal with political science in its relation to as many other social studies, namely, anthropology, economics, history, philosophy, psychology, sociology, and statistics. This gives the sociologists and the psychologists a rare opportunity to shy left-handed compliments at the "violent rantings and fantastic claims" (p. 408) of each other. Incidentally, the reader can learn some strange things from this volume, for example, that "the constitution of the United States was largely built upon the foundation of the colonial state governments" (p. 6). What, when, and where were these "colonial state governments"?

To say that the chapter on Political Science and Statistics has been written by Professor John A. Fairlie, that on Political Science and Economics by Professor Clyde L. King, and that on Political Science and History by Professor A. N. Holcombe is enough to assure the readers of this periodical that the discussions are worth attention. Some of the other discussions, moreover, are of similarly high quality and far more provocative. So much, indeed, has been included within the covers of this volume that no brief review can hope to do it justice. The variety of approaches and the clash of opinions are so great that the editors naturally make no attempt to reconcile them. Every contributor has taken a snapshot from his own angle and in keeping with his own ideas of what good focusing implies. If the aim was to get a synthesis, the result surely proves that none exists.

There is not even an approach to consensus on boundaries. Political scientists will be interested to see how easily their own field can be swallowed by something else. Professor Floyd W. Allport, for example, assures us that since all political action is behavior, political science and



behavioristic psychology become the same thing. But he is kind enough to add that "there will be a difference of opinion as to whether the political scientist should accept a complete merger of his field with that of the psychologist." He can rest well assured of that!

The other volume, by Charles A. Ellwood and six associates, is devoted to a presentation of the newest developments in the various social sciences—sociology, anthropology, social psychology, geography, economics, political science, and history. The chapter on political science is contributed by Professor Charles E. Merriam. Although covering only twenty pages, it outlines in a general way the various advances that have been made in the methods of studying political phenomena during the past quarter of a century. It is much the briefest of the seven chapters in the book, but its brevity should not be taken to imply that there has been less progress in the methodology of political science during this interval than in the other fields.

WILLIAM B. MUNRO.

*Harvard University.*

*Political Philosophy From Plato to Bentham.* By GEZA ENGELMANN. Translated by Karl F. Geiser. (New York: Harper and Brothers. 1927. Pp. xxiv, 398.)

The work here translated is, in the field of politics, unique in its method of presentation. From the English title there might be anticipated a history of political philosophy. From the German, *Meisterwerke der Staatsphilosophie*, one might expect to find a collection of important writings. It is neither the one nor the other and yet has aspects of both. The text is divided into thirteen parts. Each is headed by the name of a writer, with the title of one of his works. Under each, Dr. Engelmann has attempted to present in brief form, as by the author himself, the essential thought of the particular work. The language is his own, although in a measure he has adhered to the vocabulary of the author. The work is thus, in a sense, a collection of treatises, though these are rewritten and greatly condensed. It is, in a sense, also a history of political philosophy, in that the manner of presentation permits, and even necessarily involves, an interpretation of each author's thought.

The selection of so limited a number of writers reduces the scope of criticism. Those chosen for exposition are Plato, Aristotle, Aquinas, Dante, Machiavelli, More, Hobbes, Spinoza, Locke, Montesquieu, Rousseau, Bentham, and, in a group, Hamilton, Madison, and Jay. It is an admirable feature of the work that recognition is given to the

authors of *The Federalist*. The inclusion of Dante and of More appears most open to question. The exclusion of many notable authorities is inevitable. Most apparent is that of Bodin and that of Grotius. A note by the editors explains these particular omissions as arising from the intent of Dr. Engelmann to deal with the systems concerning the law of nature in a subsequent volume (to be followed by yet a third covering German writers). If it be possible to include Bodin at all in the school of nature, it is certainly difficult to identify him with that school more completely than writers included in the present volume, as Hobbes, Locke, and Rousseau.

As between particular writings of the different authors, Dr. Engelmann has usually made the obvious choice. Noteworthy is the discrimination shown in the use of Hobbes' *De Cive* in preference to his better known *Leviathan*. The only other choice among the various works of a writer that might not have been anticipated is that of Bentham's *Introduction to a Project for a Constitutional Code*. To the amount of space devoted to the various writers, again, little exception can be taken; except perhaps in the cases of Bentham and Hobbes. Of the two hundred and seventy-three pages of text, more than forty are given each to Aristotle and Bentham; thirty-odd to *The Federalist*; some twenty each to Plato, Spinoza, Montesquieu, and Rousseau; from ten to twenty each to Machiavelli, Hobbes, and Locke; and less than ten each to Aquinas, Dante, and More.

The presentation of the ideas and arguments in each of the treatises is accurate and sympathetic. The point of view of the author, the general spirit of his work, has been successfully maintained. The separate sketches, if used as introductions to the original works, would unquestionably make them in most cases much more intelligible on a first reading. In form, the present work is not a simple condensation, nor in substance a bare digest. Yet it is, on the one hand, an extraction of what is material, to the exclusion of the non-essential and the relatively unimportant, and, on the other hand, a conscientious briefing in the original order of what has been found to be material to the thought of each writer. The brevity with which the essence of each work is presented, the clarity of the exposition, the modernization of the language, and the consequent elimination in large measure of the tediousness, the difficulty, and the verbal idiosyncracies of the originals, must serve as the justification of a work of such peculiar character. It obviously cannot replace the original works in any serious study. There are no references by which the ideas presented can be traced,

though there is no great difficulty in locating the passages from which they have been taken.

The editors of the English translation have added nearly one-third to the volume of the work, in the shape of a note and preface to the whole and of introductions to the particular authors, as well as of a brief bibliography. The introductions, occupying a hundred pages, are by Dr. Jászi, with the exception of that to *The Federalist* by Dr. Geiser. They are excellently done and add much to the value of the book; while their not infrequent eccentricities of language do not seriously mar them. The translation by Dr. Geiser is smooth. The reviewer has had no opportunity of comparing it with the German original.

ROBERT T. CRANE.

*University of Michigan.*

*The Origin of the State.* BY ROBERT H. LOWIE. (New York: Harcourt, Brace and Company. 1927. Pp. viii, 117.)

Mr. Lowie, following up his studies in *Primitive Society* and *Primitive Religion* with this latest short book, has done more than simply carry his anthropological researches into an additional field. *The Origin of the State* is interesting to the student of political science, not simply because of its formal subject. It is anthropology's first avowed contribution to political theory and history. It goes straight to fundamentals—origins, a branch of speculation so dangerously interesting that it has led astray some of the best minds in the social sciences. And it deals by direct implication with all the issues raised for political theory by pluralism, as its chapter headings indicate ("Castes," "Sovereignty," "Associations").

Coming from a department of knowledge that has called itself scientific, and from a worker in that department whose claims to scientific methods are not pretensions, one might expect from *The Origin of the State* a purely objective and unspeculative treatment. But it is not such. To students of the history and methods of social science in general, the book is another evidence of that increasing search for underlying forms by the objective branches already shown in history by Spengler, in political science by Oppenheimer's *Der Staat*, and in sociology of the better sort by MacIver's *Community: A Sociological Study*. In Mr. Lowie's book, the reader sees anthropology, having started by generalizing on meagre details, then going on to monographic objectivity, now returning with a greater factual contribution to speculative, philosophical synthesis.

The essay deals with the various factors by which human communities have evolved, and may evolve, into modern European states, and beyond. The underlying definition of the state derives from MacIver's *Community*—an association maintaining political order within fixed territorial limits (p. 1). The factors through which political evolution operates, according to Mr. Lowie, may, I think, be fairly subsumed under a very much more generalized, less rigid, version of Oppenheimer's formula: The accretion of power to a class favored by the cultural circumstances of the civilization in which it works. At the very base of Mr. Lowie's reasoning lies the anthropological hypothesis of "cultural continuity"—that there are no sudden breaks in civilization, that all existing culture patterns may be traced back to individual psychological data or to less complex social forms lying within the reach of objective investigation.

In his use of all three of these assumptions—the definition of the state, the Oppenheimer description of its evolutionary dynamics, and the hypothesis of cultural continuity—Mr. Lowie is distinguished by the caution with which he draws his conclusions, a caution which he derives partly from his own scientific temperament and partly from the anthropological discipline which he has so long pursued.

What support for Oppenheimer's schematic progression from pre-state to modernity, what fertile suggestions from primitive lore for the pluralist's argument, Mr. Lowie's book offers, may be left for his readers' investigations. Its chief interest as a combination of field-work and speculative methods lies in its checks, stated and implied, on hasty generalization; and a few examples of these checks may here be cited.

Giving the Somali of Eastern Africa as examples, to an extent, of the Oppenheimer class-scheme, Mr. Lowie nevertheless concludes, upon additional evidence: "... under the spell of sentiment and of religious conceptions, they, like other human beings, are likely to snap their fingers at utilitarian considerations" (p. 24). Later on, "It is clear . . . that we are dealing with a plurality of factors, that even a military defeat may create castes indirectly rather than through the simple route plotted by the German sociologist" (p. 39). And in his conclusions, "When . . . we speak of bridging the chasm between a tiny Andamanese settlement and the British Empire, we deprecate the attempt to indicate the various stages by which the simpler would have necessarily tended to approach the latter. What we have tried to do is simply to prove that the germs of all possible political development are latent but demonstrable in the ruder cultures, and that a specific turn in

communal experience . . . may produce an efflorescence of novel institutions" (p. 112).

This visit of anthropology into the house of political science might fruitfully serve as an invitation for an excursion of political science into the domain of anthropology. The combination of objectivity and speculation promises a more valuable contribution to knowledge than either alone, or than the substitution of wishful "practical" reform schemes for both.

PAUL LEWINSON.

*Ohio State University.*

*The Theory of Justice.* BY RUDOLPH STAMMLER. Translated by Isaac Husick. (The Macmillan Company: New York, 1925. Pp. xli, 591.)

In commenting upon this important and difficult treatise perhaps the first point that should be emphasized is that Stammler's work is a product of that "idealistic" philosophy which, in one form or another, has been dominant in Germany since the days of Kant. Like Kant, Stammler holds the view that the element of preponderant importance in all human thought is the organizing or "formal" element, the projection of the mind itself into the world of phenomena. The general ideas which are inherent in the mind, the "categories" of thought which organize the matter of our consciousness, have their proper function in law and legal philosophy as well as in other departments of thought. He seeks, mainly by means of the logical analysis of concepts, to find universal and penetrating abstract truths and principles which will illuminate the great mass of legal detail, the positive law as historically developed. Stammler believes that these principles, when thoroughly understood and assimilated, can ultimately be brought down to earth and applied to the solution of concrete legal questions.

In order to indicate how Stammler's plan of study works out it will be helpful to refer in a separate way to two of the main divisions of the book. In Part II, the first chapter deals with "The Idea of Just Law," and succeeding chapters develop the central "idea" there presented by means of "principles" stated in rather vague and abstract language. In these chapters the author reaches the culminating point of his effort. Here he explains his conception of the "social ideal" and sets forth his general conclusions as to the essential nature of justice and law.

Now what is the "idea of just law" which Stammler establishes at this critical point of his work? A concrete rule of law that had the quality of justice would be a rule of law that was in accord with the

general concept or principle of "just law." The essential problem is, therefore, to ascertain the nature or principle of just law as a general concept. The law must be a rule binding men together in social co-operation. From another point of view, law is a form of volition. The principle of law must, therefore, be such as to harmonize the actual volitions of men. The form or style of this harmonic arrangement cannot be determined by a principle that evaluates the ends toward which volition is directed because: first, such a process of valuation would raise innumerable difficult questions as to the basis and the estimation of values which should be regarded as outside the proper field of legal science; second, it would involve the very serious risk, if not the certainty, that the wills of some men would be unduly subordinated to the wills of others under the guise of attaching preferred valuations to the interests asserted by the latter group.

Therefore, the only possible legal formula is one which will regard the volitions of individuals as *ends in themselves*. We must bear in mind, however, that these are the volitions of individuals firmly bound together in society, so that their respective wills necessarily condition one another with a complex mutuality. But the social ideal should be that the wills of the several individuals should be as free as the never-ending mutual adjustment makes possible. So we come to the formula that the aim which just law strives to realize is a "community of men willing freely." This is the legal ideal, perhaps never to be attained actually in society at large, but the guiding star which indicates the true course of legal development.

The formula may often be applied technically by the use of the conception of a "special community" which may be formed in imaginative thought to comprehend the persons interested in a concrete legal dispute. But this utilization of the formula must be kept in a subordinate position, since the true ideal requires the consideration of remote social interests, and not merely those of the immediate litigants, in order that we may approximate as nearly as possible the larger ideal community, the nation, of "men willing freely."

Turning now to the other division of the book which requires separate mention, we find in Part III that Stammeler makes the effort to descend from the grand "principles" so elaborately analyzed and explained in the earlier parts of the book, and to attempt the solution of particular cases by the application of the principles. It is here that we naturally expect the full fruit of the previous laborious effort. But it must be admitted that this is the most unsatisfactory part of the book. The

author attempts to pass judgment in accordance with his principles on a large number of concrete legal problems, grouped under such headings as, "The Right Exercise of Legal Relations," "Limits of Freedom of Contract," "The Duties of Just Law," et cetera. One cannot escape the impression, however, that the solutions are not really *derived* from the abstract principles heretofore presented. The solutions given may not be out of harmony with the principles, but one doubts whether, as a matter of actual fact, the "principles" are operative and controlling here in determining the author's choice between competing plausible rules of decision. There seems to be a gulf not yet bridged between the abstract principles and their concrete application in particular cases.

Although Stammler himself is not very successful in the task of applying his abstract principles to concrete legal problems, it may nevertheless be said with assurance that his work contains contributions of great and lasting value to legal science. Among such contributions I would list, first, his exhaustive analysis of the chief concepts and ideas constantly used in the legal field; second, his stimulating study of methodology; and third, his conscious employment of a comprehensive and profound theory of knowledge at every step. While the philosophical and legal principles which he so laboriously establishes cannot be readily used as the premises from which we might deduce definite rules of legal decision for particular cases, yet their practical utility in this respect has not been sufficiently tested to justify a final estimate of their value. In any event, the principles may serve as guiding stars whose light may direct and illuminate the development of positive law in its struggle toward justice. Finally, it may be said that Stammler's work presents one of the most successful efforts yet made to coördinate and harmonize the theoretical elements in legal science, not only with the corresponding elements in the other social sciences, but also with metaphysics and the general theory of knowledge.

CHARLES A. COLLIER.

*George Washington University.*

*A History of Socialist Thought.* BY HARRY W. LAIDLER. (New York: Thomas Y. Crowell and Company. 1927. Pp. xxii, 713.)

*The Natural History of Revolution.* BY LYFORD P. EDWARDS. (Chicago: The University of Chicago Press. 1927. Pp. xvii, 229.)

*A History of Socialist Thought*, by the well-known executive director of the League for Industrial Democracy, is, as might be expected, a book of many merits. It compresses into one volume the history of

socialist thought to the present time. It does not detach the socialists' thought from their lives and personalities or from the development of problems and institutions which affect it. The book allows the leaders of the various schools to speak for themselves to a large extent and provides the general reader and the college undergraduate with useful bibliographies of the socialist literature in the English language. All in all, it is a very useful book.

Any attempt to give so much in so little space makes selection difficult; and it is much easier for the critic to see what might have been added than to see what might have been omitted. Nevertheless, more space should have been given to criticism. The criticisms of non-socialists are given little space, either in the texts or in the bibliographies. Dr. Laidler does not even give us the criticisms which his own reading, thinking, and activity have produced. As a result, the book is not as pointed, stimulating, and provocative as the reviewer expected it to be. The author tries to give the opinions of the socialist schools on a wide variety of topics. The resulting brevity of his treatment of any one topic brings it dangerously near superficiality; it does not lead to a searching analysis of their chief peculiarities. For example, Dr. Laidler says little about Marx's theory of value and nothing about Marx's distinction between constant and variable capital. This does not do justice to their importance, and leaves the reader unprepared for later references to "the great contradiction." Again, the reader is expected to understand the rent theory, on which the Fabians say they base their socialism, from G. B. Shaw's confused exposition; the author does not refer to Sidney Webb's withdrawal in his defense against Francis A. Walker. The serious student will get less from this book than from books like Gide and Rist's *History of Economic Doctrines* and *A History of Political Theories, Recent Times*, edited by C. E. Merriam and H. E. Barnes.

So comprehensive a book inevitably raises many questions of fact and emphasis. The reviewer feels that more attention to Engels' *Condition of the Working Class* would have given a deservedly greater emphasis to his contribution to Marxism. When Marx wrote on the Gotha Program in 1875, did he lock horns with the social-democratic followers of Lassalle? Was not his criticism addressed to Bebel and Liebknecht? Dr. Laidler says that the Fabians must have greatly influenced Bernstein's writings. Bernstein once told the reviewer that he was little influenced by the Fabians but largely influenced by the discrepancy between the facts and his early Marxian beliefs. Are



Fourier and Louis Blanc to be classed as Utopian socialists? Numerous such criticisms of detail are inevitable. But neither major nor minor criticisms alter the verdict; it is a very useful book.

The far-reaching influence of socialistic thought is well seen in *The Natural History of Revolution*. The author, professor of sociology in St. Stephen's College, comes as close as he dares to the doctrine of economic determinism and is "fairly certain that within the next two or three generations a political labor party with socialistic tendencies will appear in the United States—very much such a party as now exists in Great Britain" (p. 218). He begins with the slow development of revolutionary movements and the preliminary symptoms of unrest, proceeds to discuss advanced symptoms and the economic incentive and the social myth, and then describes the outbreak of the revolution, the rise of the radicals, the reign of terror, and the return to normality. For the most part, he draws his material from the Puritan Revolution, the American Revolution, the French Revolution, and the Russian Revolution. The author's contribution is not sufficiently great, I think, for readers of this *Review* to become alarmed at his verdict that "modern political science, so called, is much like medieval physical science, largely a matter of incantations, exorcisms, and witch-hunting" (p. 212). He begins with mechanism but promptly shifts to teleology. He declares that a stable and contented society is one in which four elementary wishes find adequate expression through existing institutions and practices. We do not learn, however, what adequate expression means or how it may be discovered except through instability and discontent. The reviewer doubts that one who believes that ownership should be justified by social welfare must also believe that changes of ownership which promotes the social welfare will ultimately prevail (p. 72).

R. S. MERIAM.

*Amherst College.*

*Sozialismus und Faschismus in Italien.* BY ROBERT MICHELS. (Karlsruhe: Verlag G. Braun. 1925. Pp. 338.)

Robert Michels, at present a professor at Basel (Switzerland) and well known in English-speaking countries through his critical study of modern political parties, is singularly in a position to make a distinct contribution toward an understanding of the social background and theoretical antecedents of the movements indicated in the title. The volume reviewed here is the second dealing primarily with fascism. It

contains a series of historical and sociological essays written between 1910 and 1923.

The work is characterized by an approach which is frequently referred to on the continent as sociological. This method attempts to focus the entirety of a given social environment upon the particular problem in hand. In spite of the danger involved by the necessity of handling a variety of social sciences and their materials, the essays here presented are eloquent testimony of the fruitfulness of such an approach.

The first essay is devoted to an analysis of some "Elements in the History of the Evolution of Italian Social Patriotism." Michels suggests that Carlo Pisacane and Giuseppe Garibaldi may be considered the intellectual fathers of a combination of socialism and nationalism such as we witness in modern fascism. But for a long time their respective points of view remained of comparatively little significance, since they were in striking contrast with the overwhelming internationalism of Italian labor. It is particularly meritorious to have called attention to Pisacane who, as far as I know, has not been given due consideration by writers on fascism.

Even more important is the following essay devoted to "Studies in the History of the Evolution of Italian Imperialism." It is here that the synthetic method above referred to shows its finest qualities. Michels proceeds from a striking and fairly exhaustive analysis of the population problem of Italy to a consideration of the experiment of Tripoli. In doing so he unfolds a highly suggestive picture of the growth of Italian imperialism. It is Michels' opinion that Italian imperialism presents a separate and distinct type in which the demographic aspect predominates.

After analyzing in another essay some elements in the history of the evolution of Italian fascism, which largely contains material presented in English before, he comes to consider some "Elements in the Evolution of Fascism." He lays particular emphasis upon the great material distress which had befallen the Italian intellectuals after the war and which created something like the idea of "a class struggle reversed." It is impossible to analyze in the limited space available the complex array of other forces which Michels traces to their origin. Suffice it to say that those acquainted with the excellent critical studies of the ideology of fascism and its *duce* by Mr. William Yandell Elliott, which have appeared in this journal and elsewhere, will be much interested in the light shed upon the background of the gradual growth

of fascist doctrine which we have witnessed during the past few years.

But whatever may be the theoretical foundations of fascism, Michels reminds us that the Italian people are a thoughtful, objective, industrious, and peaceful nation. How shall we square this fact with the imperialist tendency which Italy's foreign policy has exhibited lately, to the great disquiet of all her neighbors? Michels calls our attention to a passage in Enrico Corradini's *Il volere d'Italia*: "Come il socialismo fu il metodo di redenzione del proletariato dalle classi borghesi, così il nazionalismo sarà per noi italiani il metodo di redenzione dai francesi, dai tedeschi, dagli inglesi, dagli americani del Nord e del Sud che sono i nostri borghesi." "Nationalism is to us the same thing that the class struggle is to the proletariat:" (the weapon with which to free us from unbearable pressure). To call attention as forcefully and as convincingly as Michels does to the strongly proletarian nature of Italian imperialism is of high significance. And, just as in the case of the proletariat, it would be narrow to consider only the "economic" side, which has been so forcefully presented in Constantine McGuire's *Italy's International Economic Position*. In this connection Michels rightly calls attention to the inferior social position which Italians occupy in their adopted countries. Thus Italy's new imperialism is based upon the proud consciousness of being culturally and intellectually as well as militarily and politically better than has been supposed hitherto by the world at large. To her it seems that the time has come to throw off the rôle of the Cinderella among the nations, nay more, to be in a position to conquer the place which is due her in view of her culture and intellectual attainments.

It is well to keep this deep-seated urge in mind when considering the actions of modern Italy.

*Harvard University.*

CARL JOACHIM FRIEDRICH.

*National Character.* BY ERNEST BARKER. (New York: Harper and Brothers. 1927. Pp. vii, 288.)

This book by Dr. Ernest Barker, principal of King's College, London, and professor-elect of political science in the University of Cambridge, does not leave the impression that its distinguished author entirely enjoyed himself in writing it. It is only at the end, after chapters on the genetic, geographic, economic, political, religious, literary, and educational factors in the making of national character, that we find, in a chapter on "The Signs of the Times" that clear and refreshing exposition which recalls the writer of *English Political Theory from*

*Herbert Spencer to Today.* Like grass on the top of a limestone cliff, it comes supported by chapters and sections of grey granules of facts in a formation often lacking igneous vigor and the basaltic boldness of simplicity.

Despite a title which will arouse the suspicions of many, Dr. Barker is no exponent of any theory of race complacency, Gobinesque or Nordic. He is perhaps even too contemptuous of the part played by race, and rigorously separates race from nation. A gulf is fixed between the race and the nation. His own national faith appears to find its inspiration in the *genius loci*, the spirit of the motherland, the spirit of "contiguity." "The sweet ties of neighborliness, strengthened by old and common tradition, which unite the racial blend that inhabits a given territory, and make it a nation of the spirit—which is reality—and not a nation of the body—which is simulacrum. That is true nationalism." This passage occurs in Dr. Barker's last chapter, and we could have wished that it had occurred in his first. For we are left hungry for some defense by the author of his apparent position that it is physical contiguity which is the cardinal factor in that spiritual like-mindedness which is the essence of community and makes a "nation of the spirit."

The book, however, has its polemic aspect. Dr. Barker is obviously gravely concerned with a rival "spirit of the occupation" which inspires political pluralism, guild socialism, "class-consciousness," and the like. He emphasizes even to excess that English individualism, love of eccentricity and contrariness, hatred of regulation and litigiousness of the *Kampflüchtige Engländer*, which is an obstacle to social progress in the present highly organized condition of our civilization. But he is clearly alarmed by the disruptive spirit of occupationalism, the "tendency to substitute the vocation for the nation." He rightly sees in the group of work-mates another possible like-minded group by the side of the nation, and (not without provocation on the Left) he suspects it of meditating rivalry. What then is the heart, the ideal, of this occupational group? It is the conception of man as the worker, and the affiliated doctrine of efficiency. Dr. Barker prefers "character" to efficiency, self-government to efficacy (p. 169), and insists that man is more than a worker. "Work is a matter of daily and, it may be, deadening routine." Hence, with Bertrand Russell and Mrs. Barbara Wootton, Dr. Barker preaches the doctrine of leisure, "the music we play, the words we write, the hobbies we pursue." "Leisure is greater than work, because it is the growing-time of the spirit." In a decade

when Englishmen are being told on authority that social legislation is pretty enough but that the country cannot afford it, we may perhaps suspect that there is something very dangerous in this doctrine of leisure. If the country cannot afford social legislation, can it afford leisure—"not only the work which we do but the hobbies we pursue?" If the work is routine work, let us set our intelligence to change it; but the routine of the spirit depends upon the philosophy of the spirit. When challenged by Americanism, fascism, even bolshevism with its Chicago-complex, however exaggerated these may be in their stress on work and efficiency, is this dualism of life between work, considered as routine, and leisure justified?

Dr. Barker carries his position further to an open distrust of the influence of the town. "Urbanization . . . depresses and weakens, unless social policy is applied to their protection, the force of original thought and original enterprise which is the peculiar dignity of human nature." One thinks of Athens, with Socrates even in its agora, and of modern New York with its competitive demands, and one wonders. One wonders whether Dr. Barker does not confound, as many do, rural worship with the mystical silence of the life of the spirit which Plotinus in his life, and Meister Eckhart by express word, told us was to be found in the marketplace as much as in the field. One agrees, now heartily, with Goethe's sane genius that if talent is built in stillness, character can only be built in the mid-stream of the world.

Even, however, if we believe that *laborare est orare*, that the need of our times is a gospel of humble, unintrospective, austere, efficient work and not of the proud cultivation of spiritual leisure (let alone idle leisure) and of that "soulful" apartness which Hegel said bore the hall-mark of the devil, we must freely acknowledge that Dr. Barker has seized upon very real evils when he points out the dangers of a selfish occupationalism and of a blood-haughty nationalism. We need the leisure, peace and profundity of mind which comes of work at full speed, rationally and harmoniously done in a world of confederate structure and of freely chosen fellowships. Authority lies, not in national might, but in the conditions of efficiency and in love of the brotherhoods. To those who care to have their mind set thinking about these things, and to those many who have looked for a book on nationalism which combines liberalism of outlook with a genuine love of tradition, this work of a ripe scholar and, as every educator should be, of an accomplished midwife of ideas, is heartily to be commended.

Cornell University.

G. E. G. CATLIN.

*The American Secretaries of State and Their Diplomacy.* SAMUEL FLAGG BEMIS, Editor. J. Franklin Jameson, H. Barrett Learned, and James Brown Scott, Advisory Board. (New York: Alfred A. Knopf.)

Volume I. *Historical Introduction.* By JAMES BROWN SCOTT.  
*Robert R. Livingston.* By MILLEDGE L. BONHAM, JR.  
*John Jay.* By SAMUEL FLAGG BEMIS.  
 (1927. Pp. xx, 338.)

Volume II. *Thomas Jefferson.* By SAMUEL FLAGG BEMIS.  
*Edmund Randolph.* By DICE ROBINS ANDERSON.  
*Timothy Pickering.* By HENRY J. FORD.  
*John Marshall.* By ANDREW J. MONTAGUE.  
 (1927. Pp. ix, 322.)

Volume III. *James Madison.* By CHARLES E. HILL.  
*Robert Smith.* By CHARLES C. TANSILL.  
*James Monroe.* By JULIUS W. PRATT.  
 (1927. Pp. ix, 321.)

The idea of a series setting forth the public services of the secretaries of state of the United States is to be ascribed to the late Mr. Gaillard Hunt (to whom the published work is now appropriately dedicated) and to Dr. James Brown Scott, and the original plan was that they were to be the editors. The untimely and lamented death of Mr. Hunt resulted in the selection of Professor Bemis as editor and the creation of an advisory board consisting of Messrs. Scott, Jameson, and Learned. President Nicholas Murray Butler contributes a preface in which he states the general purpose of the series, which is expected to run to a dozen or more volumes, to be "to record the history of a great public office in terms of the lives of the men who have successively held it, as well as the history and the development of the international policies of the government of the United States in terms of the public acts and expressions of the men who have been successively charged with the statement of them."

This announcement of the aims of the project indicates some of the difficulties of the task, the first and foremost of which is the nature of the office itself. When the first Congress under the Constitution created the office and defined the duties of the secretary of state it recognized the nature and extent of the president's control over the conduct of foreign relations. The position of the secretary at any one time depends upon two variables: his own personality, character, and ability, and the personality, character, and ability of the president.

And, again, the more important the foreign matters presented, the more the president's responsibility and authority have tended toward presidential determination of policies. Therefore, in estimating the impress upon the foreign policy of a secretary of state one might hope to learn what ideas were contributed by him, what by the president, and to what extent the ideas of the secretary influenced the president in his ultimate decisions. Certain secretaries of state, not many, are definitely regarded as the authors of policies: J. Q. Adams, Webster, Seward, Blaine, Hay, and Hughes. Some are just as clearly the mouth-pieces of the president. To appraise the others is no easy task. The difficulties of such a work suggest a tendency of another sort, namely, to present a narrative diplomatic history of the United States with a coöperative authorship, the absence of faults of such coöperation being to a large degree dependent upon the rigor of the editorial supervision. A reading of the three volumes now appearing gives one an impression that this latter is the type of work which the editor has given us.

Dr. Scott's "Historical Introduction" (pp. 111) is an account of the diplomatic negotiations through the signing of the peace treaty of 1783. It is a well-written and instructive chapter, in which the Jay tradition or myth is largely discarded and Franklin is brought back, with considerable enthusiasm, into the center of the picture. Had we acquired Canada, some difficulties might have been avoided, the fisheries controversy, for instance; but one may be pardoned for not accepting the dicta of Francis Wharton and Senator Bruce that Franklin might have been successful in securing Canada if properly backed by Adams and Jay (pp. 66, 302). The inclusion of chapters on the two secretaries of foreign affairs under the Confederation is wise, not only because it is high time to single out the services of Livingston and Jay in this position, but in order that their work may be appraised as compared with that of secretaries of state under the Constitution. The nature of the Continental Congress of the later Confederation period made it possible for Livingston to stand out as doing "more than any one in the home department in its foreign policy." The essays on Livingston (by Professor Bonham) and on Jay (by Professor Bemis) conclude the first volume—altogether a fresh and excellent portrayal of our diplomacy down to 1789.

Volume II contains essays upon the first four secretaries: Jefferson, by Professor Bemis; Randolph, by President Anderson; Pickering, by the late Professor H. J. Ford; and Marshall, by Governor Montague. Professor Bemis has elsewhere shown to what an extent American

foreign policies under Washington were determined by others than the secretaries of state. Here he concludes that "as secretary of state Jefferson was not destined to bring any of the great problems of foreign policy to a satisfactory settlement" (p. 92). Yet one of the greatest contributions to the permanent (until 1913) American policy was made by Jefferson in his instructions to G. Morris of March 12, 1793, as to the recognition of new governments—a matter strangely neglected by Professor Bemis. The concluding chapter of President Anderson's essay is entitled "Randolph's Ruin." One can hardly allot much to this secretary, for while the neutrality proclamation of 1793 is ascribed to Randolph (p. 131) by President Anderson, Professor Bemis states that Jay drafted it (p. 69). Jefferson certainly stated (to Monroe, July 14, 1793) that "E. R." drafted it. No one would claim that Pickering was a man of charm, or that he was a diplomat, but Professor Ford has drawn a portrait of this dour controversialist which will last. Something might have been said as to Pickering's influence on the changed attitude toward sea law to be observed in his instructions relative to the renewal of the Prussian treaty, for in them the United States adopted the rule of the Consolato as the rule of international law. Marshall's services as secretary of state were brief. Great Marshall was—he might have been one of the greatest of secretaries had he not been called to another sphere—but to say that his instructions to King of September 20, 1800, are "perhaps unequalled in the diplomatic contributions of the English-speaking world" (p. 265) is perhaps just a shade hyperbolic.

The third volume covers the secretaryships of Madison, Smith, and Monroe, and carries the narrative through the treaty of Ghent. Madison is done by Professor Charles E. Hill, Smith by Professor Tansill, and Monroe by Professor Pratt. Some effort is expended in trying to make something out of Smith, whom Madison distrusted. The wonder is that Madison stood him as long as he did. Still, Smith had no pleasant job in trying to receive and tolerate the egregious Jackson. Smith's mendacious utterance to Turreau seems to have been inspired by Madison (p. 186). Professor Hill's essay on Madison is carefully done, but it might, after all, be entitled "the conduct of foreign relations under Jefferson." What did Madison really contribute as secretary of state? Perhaps not much. Nor did Monroe. Professor Pratt has given us a portrait of the man as secretary of state, and it cannot be called flattering. Having an unsuccessful record in diplomacy, Monroe went into the cabinet under an extraordinary pledge from the president:



"He must have the actual direction of the nation's foreign relations, with conciliation with Great Britain as a chief object" (pp. 213-214). If he so began, he soon abandoned his chief object: "All Monroe's wishes for a friendly understanding with Great Britain were destined to be crushed between the fixed idea of his chief and the inflexibility of the British government" (p. 217). It is true that he drafted the instructions to the peace commissioners, which have "considerable historical interest" (p. 268); but he did not "shape the outcome," and the "credit for the tolerable result fell to the share of the five Americans in Ghent."

In the three volumes thus issued the original plan seems to have been reasonably well carried out. The various essays have been written after careful examination of source materials and recent monographs. If the reader is a bit confused as to the contributions of each secretary, it is due, as has been suggested, to the character of the office of the secretary of state. Much easier would it have been to write of the foreign policy of Canning, Palmerston, or Grey, or of Bismarck, Briand, or Stresemann. If one is somewhat depressed by the volumes, it may be because most of these secretaries were, after all, not first-rate diplomats—or that their chiefs were not—or both.

JESSE S. REEVES.

*University of Michigan.*

*Party Government in the House of Representatives.* BY PAUL DEWITT HASBROUCK. (New York: The Macmillan Company. 1927. Pp. xii, 265.)

In the past quarter of a century, and particularly since the war, a great deal has been written about American parties. The flood of special studies and systematic treatises has steadily risen. This formidable literature has tended to concentrate upon what may be termed the extra-governmental aspect of organization and activity. Too little light has been shed upon party processes within Congress and the state legislatures; and, although Dr. Hasbrouck has followed a trail already blazed by Alexander and Brown, his contribution to our knowledge of the wilderness is very serviceable indeed. No one will read the book without remarking the serious attention to detail. Dr. Hasbrouck has pored over the pages of the *Congressional Record*; as an attentive observer of the daily proceedings of the House he has found out what the rules mean in practical operation; and he has applied to veteran

politicians for an understanding of the less obvious but more vital transactions that occur behind the scenes.

The predominance of the Speaker in the time of Reed and Cannon, we are told, "was scarcely more than a transitional step on the way to frank party control." Nowadays, though still possessed of some discretionary power, the Speaker serves the majority by enforcing without bias rules that the majority have framed to facilitate their control of business. If he is a leader, he leads because of personality and experience. But his old authority has not passed intact to any individual. It has been broken up, dispersed, scattered more and more widely in successive congresses. Leadership now rests, not with the floor-leader alone, but with the committee on committees, the steering committee, and the rules committee as well. Dr. Hasbrouck explains the new arrangements—at least in so far as they affect the party in control of the House. He also considers at some length the composition and work of the standing committees. In a most interesting chapter he deals with the election returns during the period 1914–26 inclusive. He shows that 148 districts remained steadfastly Republican and 122 Democratic; that urban districts more frequently shift from one party to another; and that the percentage of reelected representatives rose from 68 in 1916 to 81 in 1924 and 88 in 1926. Fully a quarter of the book is occupied with the history of the rule for the discharge of committees and with the author's own proposals with respect to it. To this subject he attaches more significance than it would seem actually to possess. His judgment seems open to question in other directions, as where he attributes the two-party system to the struggle for possession of the presidential office, or where he says that local government "comes closer home" to the urban voters than to the rural and thus induces greater political activity.

The book has one capital defect: incoherence. Not only is there a lack of symmetry and logical design in the development of the subject, but the relationship of particular statements to the context is sometimes not at all clear; and, worse still, the ordinary rules of grammatical construction are frequently violated. We are told, for example, that Mr. Cannon was elected as Speaker "for a fourth term—a longer consecutive period than any previous Speaker had occupied the chair." Such vagaries might be due to carelessness. But what shall be said when, over and over again, in the use of words the most singular improprieties are encountered? For example: "This will be the intent [that is, the subject] of Chapter X;" Longworth's influence "continued

incisive," "the brunt of the work is done off the floor;" Bourke Cochran is "a peer of Democratic speechmakers;" "closure in its more strenuous form has not lately been applied." A straightforward statement by Walter Bagehot is called an innuendo. Words are misspelled, like "combatting" and "*ralliement*." Round brackets are used in place of square brackets.

In the matter of form, then, Dr. Hasbrouck has laid himself open to serious criticism. When he goes afield from his immediate subject, he also commits errors of fact. He asserts that the kings of England, in the early days of Parliament, alone had the initiative in proposing laws; that "some" of the Southern states besides Texas have, by statute, excluded negroes from voting at the primaries; and that down to 1824 Federalists as well as Republicans nominated their presidential candidates in Congressional caucus. Without further illustration, it may be said that the defects are so manifest and so numerous that they tend to discredit a competent piece of research; and for that reason, seeing that his work shows real merit, the author should undertake a thorough revision.

EDWARD MCCHESENEY SAIT.

*Scripps College.*

*The Department of Justice in the United States.* BY ALBERT LANGELOTTIG. (Baltimore: The Johns Hopkins Press: 1927. Pp. xvi, 318).

This analytical study, appearing in the "Studies in Administration" series of the Institute for Government Research, and minutely documented, covers the history of the office of the Attorney-General, the evolution of the Department of Justice, and the jurisdiction and powers of the various administrative officials associated with that department. The book is noteworthy for its accuracy of statement, as well as for the amount of painstaking labor which has gone into its production. The powers of the Attorney-General, and in particular those of his administrative aides, have been the result of a slow evolution, developed under a multitude of statutes, and nowhere else can be found so complete and comprehensive a review as this author presents.

Mr. Langeluttig has rendered a timely service of special value in outlining the anomalous situation caused by the aggressively independent attitude of the Comptroller-General and his refusal to recognize the opinions of the Attorney-General as binding upon his department. When any official asserts dogmatically in a controversy over his own powers that the matter involved is not "proper for submission either

to the Supreme Court or the Attorney-General," serious friction is likely to result. Congress should deal promptly with this situation before more serious conflicts develop.

In urging a unification of the various intelligence services of the government which deal with detection of crime, the author has made an excellent recommendation. It might have been strengthened by a description of the difficulties in administration which arose during the World War, resulting from the independent operation of intelligence services under the control of five major departments. The administrative powers of the Attorney-General are more elastic and far-reaching than indicated by these statutory provisions. During the war an emergency division was created within the department with a large staff of lawyers, none of whom were provided for in the standing appropriations, and many of whom exercised, under the designation of the Attorney-General, very comprehensive powers. A history of the war period would show that the discretionary powers of the Attorney-General are also more far-reaching than the statutes indicate, and that in times of crisis the exercise of these powers may become powerful factors in influencing the trend of public opinion. In a revised edition, a study of this period would add valuable material to an already important compendium.

It seems inevitable that the book as it stands should become the standard authority on the jurisdiction, powers, and limitations of official power of all persons associated with the Department of Justice; and it might profitably be studied by all of them.

JOHN LORD O'BRIAN.

*Formerly Assistant Attorney General.*

*American Government and Citizenship.* BY CHARLES E. MARTIN AND WILLIAM H. GEORGE. (New York: Alfred A. Knopf. 1927. Pp. xvi, 764.)

This comprehensive book, intended primarily as a text, is an outgrowth of "several years experience in teaching American government." "The purpose of the authors has been to relate the entire book, as far as possible, to the actual conditions and problems of civic life." In their endeavor to do this they have departed from the plan of standard works, such as Ogg and Ray, Beard, and Munro, by introducing certain new subject matter, in apportionment of space, and in the arrangement of material. The work is divided into three sections: "The Political Theory of the United States"; "The Government and Politics of the

United States"; and "Foreign Relations of the United States." The last subject is allotted three hundred pages; "Government and Politics of the United States" about three hundred and fifty. The noteworthy fact is that in this second part not only are the institutions of government, national, state, and municipal, described, but also constitutions, political parties, and citizenship.

In the first four chapters, under headings like "Political Theory of Colonial Origins" and "Political Theory of the Founding Fathers," the authors combine a political description of the colonies with an analysis of the controversy between the colonies and England. Their treatment of the "colonial background," faithful to traditional views, sets forth the political ideas originating or developing from the American conditions. Too great emphasis may have been placed on the imperialistic motive in colonization. In the fourth chapter the problem of state and national government jurisdictions is considered. Many will disagree with the statement that the defeat of the efforts to regulate child labor by national action is "conclusive proof" of a public opinion opposed to further centralization.

The authors state in their preface that they have "set forth in a more condensed form than in the majority of current studies the essential facts of American political organization," and that they have attempted to "cut through the rather rigid divisions of government, and to emphasize functions and ideas." While their purpose may be commended, it is doubtful if they have completely achieved it. The description of the governmental structure is hardly adequate. It is very largely an elaboration of constitutional provisions, legalistic in tone, and deficient because of the omission of essential material. The analysis of the constitution seems to be a vindication of the American system. The powers of the president are discussed individually, with little notice of the relationship of each to government in general. No differentiation is made between his executive and legislative functions. The explanation of the legislative branch of the government is clear. More attention might have been given congressional procedure in the broad sense. The description of the courts and their duties is much the same as in other texts. Judicial review is not mentioned in this chapter, although it is briefly treated elsewhere. An important rôle in government is claimed for administration, but little space is devoted to defining it. The merit system receives casual mention and the budget system of the federal government none at all. One of the most lucid statements of the position of the individual in the United States in

relation to government that the reviewer has encountered is found in the chapter on "The Constitution and the Citizen," although he thinks the title inaccurate and would question the obligation of the citizen to stand "staunchly against the disintegrating forces of anarchism, in whatever guise they appear" (p. 386). The history of party alignments in the United States is told briefly and is the orthodox version, especially the account of the rise of the party system. The discussion of platforms is long and somewhat confusing. Throughout this entire section of the book there is a notable lack of critical tone. The authors do make, however, what many readers will consider an ill-advised and ineffective effort to discredit Mr. Beard's economic interpretation.

An exposition of the principal foreign policies developed by the United States, traced from their inception, and a description of diplomatic procedure as practiced by the United States constitute the third section of the book, in many respects the best part. The selection is sufficiently inclusive to portray American foreign policy. The account is fairly accurate although idealistic. There are a few minor errors—the American treaty of Lausanne has not been "definitely rejected by the Senate"—but they do not detract much from the description of diplomatic practices.

The authors have presented a book which represents a bold attempt to get away from what is often considered to be an artificial classification of subject matter. In spite of the numerous defects mentioned, it is suitable for use as a text for courses in American government. However, it would have to be supplemented by other reading. A serious defect of the work for class-room use is the omission of the text of the Constitution.

HOWARD B. CALDERWOOD, JR.

*University of Michigan.*

*The New Governments of Eastern Europe.* BY MALBONE W. GRAHAM, JR. (New York: Henry Holt and Company. 1927. Pp. xii, 826.)

Three years ago, in his *New Governments of Central Europe*, Professor Graham dealt with the republics that rose from the ruin of Hapsburg and Hohenzollern empire. Now, on the same plan and scale, we have the dissolution of Romanoff empire and the rise of soviet Russia, republican Poland, and the four Baltic democracies of Finland, Esthonia, Latvia, and Lithuania.

The plan involves first historical description, then documents. Anatomy and physiology are mingled. That is to say, the constitutional

and legal institutions are analyzed; then the parties and other political influences are portrayed, as they shape those institutions and determine their functioning. There is in every case a summary description of pre-war conditions, but the bulk of space is given to the tortuous course of events during the war and the nine years following. There follows an invaluable collection (242 pages) of relevant documentary material; not only constitutions, but treaties, statutes, decrees, parliamentary resolutions, statements by statesmen, programs of parties. These are presented without comment. It will be for the future political student to exploit and analyze this treasure, and develop the history which the author could here only sketch.

From the former volume is continued the ingenious attempt to portray in graphic form the political history since 1917, measured by the time scale. There is a graph for each country (except Russia, whose absence one regrets, though appreciating the reason: there have been no parties whose growth or decline can be measured, no premiers to rise and fall). For every month of the decade one sees the political picture—who is prime minister, what parties are in parliament, with what strength. There is even an attempt to indicate, by shading, the pro-government or opposition attitude of each party. Inevitably, this attempt involves many doubtful points. There is much Gordian knot-cutting. But at least the large outlines are made clearly understandable.

One might question the validity of the scale on which space is distributed. Twenty-nine per cent of the pages go to Russia (of which one-fourth is historical background serving all six states), twenty-two per cent to Poland, and to the four minor Baltic countries actually forty-six per cent. Presumably the justification is the author's obvious conviction that democratic institutions, not utopian economic experiments or precarious absolutism, are the real interest of his reader. The student of comparative government is informed at great length of the twists and turns by which constitutional draftsmen in what are usually regarded as unimportant states have met the world-wide problems of free government. Shall the executive be subjected to the day-to-day vicissitudes of the fragmentary parties that result from proportional representation? Shall representation be in one chamber or two? May a court declare the nullity of that representative body's legislation? Can the voters control government's action by initiative, referendum, and recall? Is the dominating agrarian problem of land distribution soluble in law and peaceful administration? Such questions of political and administrative science have been occupying the statesmen of

Weimar, and now of Warsaw, Helsingfors, Tallin, Riga, and Kaunas. Under what external political and internal economic pressures, and with what mutual imitation and avoidance of errors, these constitutional contrivers have said their say in fundamental law—this is set forth in full detail. The description is eminently worth while, though experience with these structures is still slight, and the Polish and Lithuanian *coups d'état* of 1926 may have been rather disturbing to the author.

Mr. Graham does not conceal his personal judgment on tendencies or on details. The fairly frequent use of such words as "sane," "rascal," and "fatuous" may be bold procedure. Yet to this reviewer it seems that on the whole an eminently sound judgment has informed the treatment. The reader has a sense of confident, competent guidance through the jungle of unfamiliar names and political forces; he feels that he now has the clue to guide him in the identification of references in the press and in his estimate of the flood of official propaganda.

One may note in conclusion that, in contrast with much current comment on fascist and Balkanizing tendencies in Europe, the keynote of this extremely useful work is democratic optimism.

HENRY R. SPENCER.

*Ohio State University.*

*China and the Occident, the Origin and Development of the Boxer Movement.* BY GEORGE NYE STEIGER. (New Haven: Yale University Press. 1927. Pp. xix, 349.)

Handsomely printed and bound, this book appears as the seventh to be published by Yale University from the Mather Memorial Fund. Its sub-title explains the author's principal theme, the earlier chapters, which comprise considerably less than half the text, serving to provide an analysis of the forces in Sino-foreign relations, since the sixteenth century, which conditioned the Boxer movement. Appendices contain the essential documents of the post-siege settlement.

Professor Steiger's thesis may be stated best in his own words: "During the months which followed the seizure of the Taku forts, the Chinese people, with the approval and leadership of the more reactionary elements among the official class, poured out upon the helpless missionaries and native Christians their accumulated store of bitterness and rage. . . . For these atrocities . . . there can be no excuse. Yet these crimes were not, as has been so often charged, the result of a deliberate conspiracy; they were the work of an infuriated people,



whose fury had been aroused to the breaking point by a long series of foreign aggressions" (pp. 281-2).

The differences between Chinese and Occidental political ideas, the author believes, were the essential cause of the failure to evolve smooth working relations between China and Western states. The latter did not grasp the reality of devolved power behind the facade of despotism. They did not understand why treaties were made only to be disregarded nor why a commercial people had no commercial law. They translated the natural reactions of the localistic, communal Chinese into expressions of antagonism—which they subsequently became. At first, and up to the latest years of the nineteenth century, anti-foreignism was "almost entirely associated with the spread of Christian missions" (p. 33). Weight is attached to the reality of the common people's opinion on so quiet an event as a naval concentration off Taku (p. 109). ". . . fear of the foreign powers was spreading among the people in all parts of the land, and was beginning to produce among the mass of the Chinese people a spirit of militant national patriotism" (p. 127). The Empress Dowager is credited with personal instigation of the several steps by which the country's defenses were improved, the "battle of concessions" terminated, and the spirit of the people stiffened toward the contemplation of hostilities with the hitherto-obeyed foreigners.

Dr. Steiger rejects the Lao Nai-hsuan theory of the origin of the I-ho Chuan and presents evidence that they grew out of the existing system of *tuan*—local, self-constituted but officially recognized militia bands, or *vigilanti*, which the Empress Dowager had encouraged in the northern provinces as a measure of reform in the direction of a strong army. He admits the difficulty of accounting for the spiritism of the Boxers, but advances the suggestion that it may have been drawn in part from imported forms of drill, in part from Christian phraseology. The anti-foreign animus was directed against Christianity not as a religion but as a contributing element to Occidental aggression. A clear-cut contrast between the methods of Yuan Shih-kai in Shantung and of the Chihli administration, the former able to follow Chinese principles in reducing the Boxer fever, the latter compelled to harsher tactics by the necessity of attending to diplomatic protests, affords material for contemporary statesmen. Yuan succeeded, the Chihli authorities failed. This point—the aggressive attitude of the legations—the author stresses as mainly responsible for the failure of the government to restrain the Boxers and for its own ultimate decision to make common cause with them.

The study discloses extensive use of the state papers of several countries, of mission files, and of newspapers published in China. Written with spirit, it is at once a work of high scholarship and of general interest, without question the most thorough analysis yet presented of the causes and character of the Boxer troubles. There is, however, need of a second study of the same problem from the Chinese records. Until such a study is made, the last word will remain unwritten upon a number of contentious points, among them the origin of the Boxers, the extent and intensity of popular feeling, the part played by the Empress Dowager and the officials in the movement, and the degree to which it was anti-Christian. In some instances Professor Steiger's conclusions strike one as bending a little toward the furtherance of a thesis, in others as decidedly more positively stated than the evidence presented would warrant. On the whole, however, his thoroughness in research and his courage in attacking issues in controversy render this monograph an impressive contribution to our knowledge of Chinese history.

HAROLD S. QUIGLEY.

*University of Minnesota.*

*Teaching the Social Studies.* BY EDGAR DAWSON AND OTHERS. (New York: The Macmillan Company. 1927. Pp. xiii, 405.)

This book is an addition to the continually growing list of efforts to enable secondary school teachers to understand the task they are undertaking and the best ways of performing it. Of its sixteen chapters, eight are written by Dr. Dawson himself, and the others by specialists in particular fields. The names of Munro in political science, Johnson in history, and Giddings in sociology, for instance, show the high quality of the collaborators whom Dr. Dawson succeeded in enlisting. The interpretation of the term "social studies" is so broad that one wonders whether it may lead to jurisdictional disputes, for one finds here chapters on biology and psychology as well as the subjects which are more commonly included in the perhaps too limited connotation of "social studies." The chapters on specific sciences undertake to show the contributions that each science makes to the understanding of human progress. One would hardly expect that all would be of equal value.

Dr. Dawson's own chapters, indeed, constitute that part of the book which will be of the greatest worth to the teacher who wants to know *how* the job should be done. He does not undertake to be unreasonably

dogmatic, for, as Professor Munro well says, "there is no best method, no ideal method." The chapters on "The Social Studies Laboratory," "Tests and Examinations," and "The Teacher of the Social Studies," are among the best brief discussions that have appeared on these themes.

The reviewer believes there is more justification for a one-year course in world history than Dr. Dawson finds. He cannot quite agree, either, with Dr. Dawson's idea that, if a school has too few trained teachers of the social studies to meet the demand for these subjects, the surplus pupils should be forced to study some other subject for which a trained teacher may be available. Political science, history, sociology, and economics can make their own contribution to information and mental growth under an inexperienced teacher, or even no teacher at all. An occasional disagreement with the author, however, will not weaken the impression that Dr. Dawson is earnestly seeking to bring about better teaching of the social studies, and that his labors as represented in this book are highly commendable.

R. O. HUGHES.

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#### BRIEFER NOTICES

##### AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

*Readings in American Government* (Holt, pp. xiv, 354), by Dr. James K. Pollock, of the University of Michigan, is the latest compilation of selections for use in introductory government courses. In the choice of material the editor has "attempted to make selections which will be helpful and clarifying, and which at the same time are more or less classic" and to "bring the student or general reader into contact with many of the significant men who either occupied the governmental stage or have been peculiarly situated to depict the important phases of American politics." In carrying out this aim he has given short extracts from the writings of such persons as John Adams, Hamilton, De Tocqueville, Madison, Jefferson, Webster, Cooley, Cleveland, Roosevelt, Root, Wilson, etc. There are also readings chosen from important decisions of the United States Supreme Court. The usefulness of the volume is increased by short notes at the beginning of each selection telling something of the author and the significance of his remarks. The arrangement of material is good and the book is printed in clear type. All in all, it is a worth-while volume and not simply another book of readings.

*Uncle Joe Cannon: The Story of a Pioneer American* (Holt, pp. xliv, 362), as told by L. White Busbey, for twenty years his private secretary, is somewhat unique in that the first person is used throughout although the work is not truly an autobiography. As Mr. Cannon writes in the foreword: "I have gone over the record of my span of life with Mr. Busbey in a reminiscent way and he has sifted the grain from the chaff. It is my story, but his book." Of particular interest are the chapters telling of the westward movement of the Cannon family from North Carolina to the banks of the Wabash and those narrating the subject's later career as congressional leader and Speaker. There is little that is new in the book, but the point of view and interpretation of events make it especially valuable. On the other hand, there are one or two matters which have been made public for the first time, such as the account of how Cannon saved the step-mother of Abraham Lincoln from prosecution for charges brought against her at Charleston, Illinois, while Lincoln was president (pp. 108-112), and certain facts connected with the appropriations for national defense at the beginning of the Spanish-American War. Students of American government and politics should be grateful to Mr. Busbey, who died before the work was finished, and to his wife, who carried it to completion, for giving us such an interesting and readable account of the career of one of the most colorful political figures of the generation which has just passed.

*Immigration Restriction, A Study of the Opposition to and Regulation of Immigration into the United States*, by Roy L. Garis (Macmillan Company, pp. 376), gives an excellent outline of the various legislative enactments which have dealt with this problem and with their administration. Professor Garis treats the question in historical fashion, showing that immigration restriction comes down to us from colonial days. He also gives the arguments which led public opinion to demand the passage of these different immigration laws, but does not try to pass upon their merits. The author does not offer any solution of his own, but there is no doubt that he favors restriction of some sort. The book, as the title says, is a study, not a piece of propaganda. Another aspect of the same problem is found in *The Polish Peasant in Europe and America*, by W. I. Thomas and Florian Znaniecki (Vol. II, Alfred A. Knopf, pp. 250). The authors seem to have studied the Poles in Chicago and nowhere else in America. They have delved into the records of the Chicago Legal Aid Society and the Juvenile Court of Cook County and set forth case after case full of filth. The book seems

inclined to disregard the Poles who do not live in Chicago and who do not get into trouble; the result of which is that the book proves nothing.

Recent publications of the National Industrial Conference Board include the fifth in the series of studies on *The Cost of Government in the United States, 1925-26* (pp. 294); a study of *The Fiscal Problem in Illinois* (pp. 219); and a volume on *Industrial Progress and Regulatory Legislation in New York State* (pp. 148). The study on the cost of government shows that while per capita expenditures and taxes for national, state, and local governments in the United States had decreased slightly in 1925 from 1924, there was a substantial increase in total taxes for 1926 above those for the previous two years, establishing a new maximum. While the expenditures and taxes of the national government have continued to decrease from the war-time peak, state and local expenditures continue to increase steadily.

Those who are familiar with Constantine Panunzio's *Soul of an Immigrant* will be interested in the same author's more recent book, *Immigration Crossroads* (Macmillan, pp. 307). It deals with immigration problems from an immigrant's point of view. The author claims that our present immigration laws are not accomplishing their true purpose and suggests some remedies.

A Senate document on the abolition of the secrecy of party funds by Perry Belmont, which was printed twelve years ago, has now been republished, with the addition of a long author's preface, in a volume entitled *Return to Secret Party Funds* (G. P. Putnam's Sons, pp. xlv, 211). The preface deals with the investigations made since the document was first compiled.

The second volume of *Our Times*, entitled *America Finding Herself*, by Mark Sullivan, has been published by Scribner's (pp. 668). It is, like the first volume, a conglomerate mass of material: school readers, popular songs, political figures, pure food, trusts, automobiles, and the beginnings of aviation. The chief pleasure to be derived from reading the book is the ability to keep saying "I remember that."

Four volumes of the *History of American Life*, which was announced some time ago as forthcoming under the editorship of Professors Schlesinger and Fox, have recently appeared and seem fully to justify the high expectations that preceded their appearance. The first volume, by Thomas J. Wertenbaker, covers the period down to 1690. Then

James Truslow Adams brings the story to 1763. Carl Russell Fish writes the volume dealing with the era 1830-1850, and Allan Nevins writes on *The Emergence of Modern America* (1865-1878). The other volumes are to appear presently. From every point of view the series promises to be a most valuable one.

Professor Carl Becker's readable short history of the United States, first published in 1920 under the title, *The United States: An Experiment in Democracy*, has been reprinted (Harper, pp. 332) under the slightly revised title, *Our Great Experiment in Democracy*. The content of the book is unaltered. It is a popular but interpretative rather than factual history of American political and economic development. A review of the earlier book will be found in this journal, volume XV, page 616.

By arrangement with Harper's, a three-volume set containing *Selected Literary and Political Papers and Addresses of Woodrow Wilson* has been brought out by Grosset and Dunlap. This forms a convenient, moderate-priced edition which many students of history and politics will be glad to have.

A useful volume on *Practice and Evidence Before the U. S. Board of Tax Appeals* (pp. 222), by Charles D. Hamel, is published by Prentice-Hall. The author served as the first chairman of this board.

#### FOREIGN AND COMPARATIVE GOVERNMENT

*Traité Élémentaire du Contentieux Administratif—Compétence, Jurisdictions, Recours*, by Jean Appleton (Paris: Librairie Dalloz, pp. 665), is most valuable for a better understanding of recent tendencies in the development of French administrative courts. It is well known that French administrative law is in a large part the result of judicial interpretation by the *Conseil d'État*. Inasmuch as the last edition of Laferrière's famous *Traité de la juridiction administrative et des recours contentieux* was published in 1896, students of comparative government will receive Professor Appleton's work with satisfaction. The author, after dealing with the general principles involved in the separation of administrative and judicial authorities, takes up in detail the various aspects of *contentieux administratif*, which he defines as *l'ensemble des litiges intéressant les services public*. This leads him to consider (1) the competence of administrative authorities (Book II); (2) the procedure before the different administrative courts (Book III); and (3) the actions

which may be brought against such administrative authorities before these administrative courts (Book IV). While this treatise is elementary in scope, it will enable the reader to grasp some of the broader problems of administration which are encountered in the modern state. It is quite fortunate that this book should follow right on the heels of Mr. John Dickinson's *Administrative Justice and the Supremacy of Law in the United States*. Can the many functions (*services publics*) which the modern state has to undertake in all the fields of social friction created by the growth of industrial civilization be distributed on the basis of such a distinction as "questions of fact" and "questions of law," or will it be inevitable to revamp the entire system of judicial procedure on the basis of the nature of the suits involved? If Professor Appleton does not afford us an answer to this question, he at least shows us clearly the results obtained by employing the second alternative. His analysis is the more interesting as it takes into account the broader principles evolved by Professor Duguit.

C. J. F.

*Gladstone and Britain's Imperial Policy*, by Paul Knaplund (Macmillan, pp. 236), is divided into two parts, the first being the author's account and interpretation of this policy, and the second a collection of speeches, memoranda, and letters giving Gladstone's views in his own words. The purpose of the book is to show that although Gladstone did not desire a closer connection between England and her colonies, he did indeed hope for "a union of many happy Englands, a Commonwealth such as the one which is now taking fairly definite shape." In the same field is a convenient little manual on *Empire Settlement* by Sir John A. R. Marriott (Oxford University Press, pp. 134). The writer does not attempt to cover the subject of the dependent empire, but there is an outline of the settlement of British North America, Australia, New Zealand, the Union of South Africa, and Rhodesia. There is also a very suggestive chapter on "The Machinery of Migration."

*British War Finance, 1914-1919* (Columbia University Press, 1927, pp. 316), by Henry F. Grady, is a general survey of the financial experience of Great Britain during the war and for a year following the armistice. The book was written in London, largely in 1919 when the author was serving as American trade commissioner, and was subsequently presented as a doctoral dissertation at Columbia University. The principal subjects treated are: financial mobilization, government revenue, government borrowings, banking during the war, the money

market, and financial reconstruction. Political scientists will probably find of most interest the chapter on government revenue, which presents, among other things, a convenient summary of war-time taxation, a history of the various taxes and their yields, and a criticism of the excess profits tax and of the country's war-time taxation policy in general. The opinion is expressed that the government ought to have taxed considerably more heavily during the early years of the war.

*Egypt*, by George Young (Scribner's, pp. 353), consists of an historical survey of that country since the time of Napoleon, a more thorough account of the present conditions in Egypt, and an intensive treatment of the problem of the relations with England. Mr. Young discusses all possible aspects and solutions of that problem and decides in favor of having Egypt join the League of Nations in spite of the Protocol of 1924 which distinctly prohibits an appeal to the League in disputes arising between England and Egypt.

William Albery's *Parliamentary History of Horsham* (1295-1885) is a notable contribution to English local history in its political aspects (Longman, pp. 557). Horsham is an ancient parliamentary borough—one of the pre-reform, burgage-tenure type. In the old days it was captured, held, and exploited by various lordly patrons. The tale of how this was done is narrated in full. It is a tale of bossism unashamed. Since 1832 the chronicle deals with the various elections, including a definitive account of the notorious Horsham polling of 1847. For those who are interested in English elections, mediaeval and modern, the volume contains a wealth of material. There are many good portraits and other illustrations.

*The House of Lords in the XVIIIth Century*, by A. S. Turberville (Clarendon Press, pp. 556), is a continuation of the author's earlier volume on the House of Lords during the reign of William III which appeared fourteen years ago. Beginning with the dispute between the two houses in the early years of Queen Anne's reign, the book traces the development of the upper chamber through the era of Walpole, Chatham, and North down to the eve of the nineteenth century. The work has been done with great care and abundant documentation. Toward the close of the volume there are interesting chapters on the peerage in general, its social influence, and its relation to the constituencies. An excellent bibliography completes Mr. Turberville's study, which may be commended as a model of its kind.



The latest volume in the Whitehall Series deals with *The Board of Education* (Putnam's, pp. 299) as a branch of British national administration. The author is Sir Lewis A. Selby-Bigge, the permanent secretary of this department. This volume maintains the good standard set by earlier volumes in the series. Not the least interesting among its various chapters on history, organization, and methods is one entitled "What the Board Does Not Do."

A compact single volume on *La Troisième République*, by the facile French journalist, Raymond Recouly, has been published by Librairie Hachette (pp. 337). With swift and incisive strokes the author pictures the outstanding happenings of this fifty-seven-year stretch—the Commune, the septennate, the Berlin Congress, colonial expansion, Boulanger, the Panama scandal, Dreyfus, the struggle with clericalism, Morocco, the war, and the peace. It is a glowing panorama, and all very cleverly delineated. The book deserves to be translated into English.

Those who desire to have at hand a concise, clear, and readable survey of Japanese history from earliest times to the present day will find a book to their liking in Herbert H. Gowen's *Outline History of Japan* (Appleton, pp. 458). The volume is well-proportioned and gives due emphasis to all the factors which are now regarded as consequential in the making of history. There is a useful classified bibliography.

Professor F. C. Dietz, of the University of Illinois, has written a one-volume history of England called *A Political and Social History of England* (Macmillan Company, pp. 772). If the title had been "The Financial Chronicles of England" it would have come nearer to describing the contents of the book. Taxation and business development are the two favorite topics of the author, and he deals with them enthusiastically and interestingly. He revels in the economic causes of wars, and it is surprising to find that he does not consider them of supreme importance in the last great struggle. Perhaps the most serious gap in the book is the lack of adequate discussion of the Statute of Artificers. Undoubtedly that act is meant when the Statute of Apprentices is mentioned on p. 180, and eight lines are given to a description of that and the Poor Law of 1601. This hardly seems sufficient, especially in view of the fact that the author himself frequently mentions the Tudor concept of the well-ordered state as a basis of comparison with later theories and conditions. Another new one-volume *History*

of *Great Britain* has been written by Professor Howard Robinson (Houghton Mifflin Company, pp. 952). It devotes special attention to the British dominions.

The second volume of Hillaire Belloc's *History of England* (G. P. Putnam's Sons, pp. 478) continues his attack upon the accepted version of constitutional history as expounded by Stubbs, Maitland, et al. If the author had been a little more careful in details—as, for example, when he calls the eldest son of Henry III, Prince of Wales (pp. 356–7)—his major premises might bear more weight. No one can deny that the book is an entertaining one, whatever its value as history.

W. Steward Wallace has published in booklet form the notable essay on *The Growth of Canadian National Feeling* (Macmillan Company, pp. 85) which appeared in the *Canadian Historical Review* some years ago. In this republication the essay has been considerably expanded and somewhat revised.

*The British Coal Dilemma*, by Isador Lubin and Helen Everett (Macmillan Company, pp. 370), deals fully with the various phases of this subject, including the political implications.

#### INTERNATIONAL LAW AND RELATIONS

*China and Foreign Powers, An Historical Review of Their Relations* (Oxford, pp. vi, 78), was prepared by Sir Frederick Whyte, one of the British delegates to the 1927 Institute of Pacific Relations, as a "memorandum on the history of British relations with China." The title, *China and Foreign Powers* is misleading: throughout the thirty-page historical summary, Russia (Imperial or Soviet), Japan, and the United States appear only incidentally—when or as their policies affect the policy of Great Britain in China. The Appendix (pp. 39–78), which contains only British and Chinese documents, emphasizes even more strongly the exclusively British aspect of the memorandum. The documents included in the Appendix, while interesting, are not particularly well chosen. To a non-British reader it would seem that Chien Lung's oft-cited "Mandate" to George III and Palmerston's despatch of February 20, 1840 (which, incidentally, weakens, by the space it devotes to the subject of opium, Sir Frederick's objection to the term "Opium War"), might well have been omitted to make room for such documents as Secretary Hay's "open door" notes and the answers of the several powers to which the notes were addressed. The inclusion of this material

would have enabled the less informed among his readers to check up on the author's statement (p. 9) that "Great Britain assented to the principle without reserve, the other powers with qualifications, while Russia was evasive and hostile." Russia's evasion may be conceded; but the reviewer can find no qualifications in the replies from any of the other powers, while the British acceptance "in regard to the leased territory of Wei-hai-wei, and all territory in China which may hereafter be acquired by Great Britain by lease or otherwise" (Lord Salisbury to Mr. Choate, Nov. 30, 1899), certainly appears to exclude the Kowloon Extension which had been acquired by lease during the previous year. If space permitted, detailed exceptions might be taken to other statements and assumptions which appear in the work. An official career in India and a desire to cultivate Chinese good-will do not, of themselves, constitute adequate qualifications for writing an authoritative summary of British-Chinese relations. Despite its shortcomings, the pamphlet deserves some attention, since it reflects a growing desire in Great Britain to improve, even at the expense of certain local British interests in China, the basis of relations between the two countries. (G. N. S.)

*L'antagonismo anglo-russo in Asia nell'ultimo ventennio (1907-1927)*, by Giambattista Mazzoleni (pp. 72), is the first of a series of studies to be published by the Faculty of Political Sciences of the University of Pavia. This *Colonna di Scienze Politiche* will be a supplement to the well-known and scholarly *Annuario di Politica Estera*. The series of studies will be divided into three parts, dealing with political facts, political theory, and international economic and financial questions. The first study here presented makes the reviewer hope that many more will follow in its path. It is a clear and dispassionate analysis of the recent history of Anglo-Russian relations in the Far East, taking into special consideration Afghanistan, Persia, and China. The emphasis, however, is decidedly upon the latter. While certain minor errors of fact might be pointed out, it may suffice to say here that the author clearly recognizes the tactical advantages which the Russians have in Asia on the basis of their political philosophy. The reviewer agrees with the author that the outlook for the future is quite menacing at present. The economic and cultural significance of China makes a peaceful establishment of satisfactory governmental conditions there a prerequisite to satisfactory developments in Asia.

The new title, *The Essentials of International Public Law and Organization*, which Professor A. S. Hershey has given to the revised and

enlarged edition (Macmillan Company, pp. xxii, 784) of his earlier work, *International Public Law*, is in recognition of the "continued progress of international coöperation, legislation, and organization." In conformity with this progressive emphasis there has been added a chapter dealing with the prevention and solution of differences through international organization and coöperation. As in his earlier work, Professor Hershey, in dealing with multi-lateral treaties such as the League covenant and the Hague conventions, in the main limits the text to quotations from the conventions while adding copious footnotes illustrating the development of their provisions. The very useful introductory chapters of the first edition on the growth of international law have been lengthened by a summary of the events leading up to the World War and by a new chapter on "The Paris Treaties and After."

Two more of the excellent publications of the Naval War College have appeared. *International Law Documents, International Agreements, 1924* (Government Printing Office, pp. 190) contains the text of many important treaties and conventions, among them the Washington treaty on limitation of armament, 1922; Nicaraguan Canal route convention, 1914; Neutralization of Aaland Islands convention, 1921; a group of mandates; the treaty between Great Britain and the United States in regard to smuggling of intoxicating liquors; and the report of the commission of jurists upon radio and aerial affairs, 1923, as well as other documents of almost equal importance. *International Law Documents, Regulation of Maritime Warfare, 1925* (Government Printing Office, pp. 207) is a digest of all such regulations as issued through the Hague conventions, the Declarations of London and Paris, the Institut de Droit International, and by the various governments. Regulations originally in French have, in general, been left in that language; all others are in English.

*Nation und Staat* is a new periodical devoted to the minorities problem and published by the *Universitätsverlagbuchhandlung* in Vienna. In the first number there is evidence of the competence of the editors and the soundness of their aim (to present a comprehensive and unified view of the problem in order to balance the fragmentary and occasional treatment thereof found in current periodicals and newspapers). The staff and list of contributors is to be very cosmopolitan, or at least multi-national. Two dangers confront the new periodical: the danger of exaggerating the importance of the cause of the minorities, a danger to which most of its friends succumb, and the danger of becoming too

largely an organ of German minorities. Of both of these dangers there are traces in the first number. (P. B. P.)

The *Third Annual Report of the Permanent Court of International Justice* (Sijthoff Publishing Co., Leyden, 1927, pp. 426) covers the period June 15, 1926, to June 15, 1927. The general plan is the same as in the preceding reports, but there are new features designed to furnish a more systematic survey of the Court's activities and to facilitate reference to the forty-eight other volumes of the Court's publications to date. The bibliographical list of books, articles, and documents relating to the Court, presented in Chapter IX, includes more than six hundred new titles. Chapter X completes the "Collection of Texts Governing the Jurisdiction of the Court" which was published in 1926.

There seems to be no end to the types of text-books in civics—community civics, economic civics, social civics, every-day civics, and now *International Civics*, a text-book by Professor Pitman B. Potter and Mr. Roscoe L. West (Macmillan, pp. 315). In brief compass and in clear fashion the authors give a summary of international law, organization, relations, and problems. Three chapters are devoted to the League of Nations.

Last year, in the course of his leisurely jaunt around the world, Professor Manley O. Hudson gave four lectures on world problems at the University of Calcutta. These have now been published by the Calcutta University under the title *Current International Coöperation* (pp. 149). They deal with the League of Nations, the rôle of international courts, and the current development of international law.

Mr. Henry L. Stimson's mission has resulted in a book, *American Policy in Nicaragua* (Scribner's, pp. 129). It deals with the historical background of the Nicaraguan embroglio, explains the settlement of 1927, and gives the author's opinions as to the essentials of American policy in the future.

*The Outlawry of War, A Constructive Policy for World Peace*, by Charles Clayton Morrison, editor of *The Christian Century* (Willett, Clark, and Colby, pp. 300), is a point of view rather than a detailed study. A sentence italicized by the author gives us his main conclusion: "On the day after the Senate of the United States passes the Borah resolution looking toward the outlawry of war the business of world

peace will pass out of the hands of the war offices and the diplomats into the hands of the people themselves."

#### LOCAL GOVERNMENT

The story of a grim generation is vividly narrated in Denis T. Lynch's volume on *Boss Tweed* (Boni and Liveright, pp. 433). William M. Tweed deserves a biography more than some of his compatriots who have been accorded this honor during the past few years, for he occupies a unique place in American history. His fame is world-wide. His luster as the primate among urban speculators has not been dimmed by the lapse of a half-century, nor is it likely to be in the decades to come. The whole story of Tweed's boyhood, his initiation into politics, his rise to the pinnacle of power, and his drop into the abyss is told in a sprightly, journalistic style, with emphasis on the salient and the picturesque. It is the truth, but it reads like fiction. The book is one that every serious student of practical politics should read and own.

Students of municipal government will find a great deal of helpful illustrative material in John Griffen Thompson's volume on *Urbanization* (Dutton, pp. 683). A large portion of the book is devoted to a study of city growth in its effect upon government. There are interesting chapters upon urbanization in its relation to political activity, political leadership, political corruption, the efficiency of government, and so on, all of them presenting various phases of the subject, both old and new. Many of the author's discussions are historical; indeed, about half the book is of that nature. There is an extraordinarily complete index, occupying sixty-four pages.

In *Measuring Municipal Government* (Municipal Administrative Service and School of Citizenship and Public Affairs, Syracuse University, Publication Number 4, 1927, pp. 88) Dr. Clarence E. Ridley analyzes and discusses previous efforts to set up criteria for measuring the effectiveness of municipal administration and afterwards puts forward his own criteria for measuring the work of fire, health, police, and public works departments. He believes that the results of government are measurable, but concedes that the development of measurement standards "will be a slow process." An appendix contains useful tables and lists, including an approximately complete bibliography of the subject.

*Twenty Years of Municipal Research*, a pamphlet prepared by Mr. H. H. Freeman, director of the Buffalo Municipal Research Bureau,

was first published by the Government Research Conference in 1926. A new and slightly enlarged edition (pp. 36) was issued in 1927. The booklet brings together a good deal of interesting information and concludes with a convenient directory of governmental research agencies, some eighty in all. It, however, hardly more than suggests the comprehensive treatise on the subject that might profitably be written.

The Preliminary Report of the Special Joint Committee on Taxation and Retrenchment upon *Tax Exemption in the State of New York* (Legislative Document, 1927, No. 86, pp. 263) is full of statistical and other information on conditions in that state. The report is of still further value inasmuch as it contains a digest of exemption provisions in all of the states and indicates whether such provisions are constitutional or statutory.

An excellent example of New England town history at its best is *The Birthplace of Vermont, a History of Windsor to 1781*, by Henry Steele Wardner (Scribner's, pp. 562). To those interested in early town and state government it offers a wealth of material in the way of records of town and parish meetings and of the early charters and constitution. Many parts are too detailed for general reading, and there are too many lists of names for those whose ancestors did not live at Windsor; but the book is well and intelligently written, and judicious skippings make it a volume to be perused for pleasure as well as profit.

During the past year the Detroit Bureau of Governmental Research has issued several special reports on the financial problems of certain school districts, a statement of the real estate owned by the city of Detroit, and a second analysis of the Detroit special assessment fund.

#### POLITICAL THEORY AND MISCELLANEOUS

Messrs. Harcourt, Brace and Company have published, under the general title *Main Currents in American Thought*, two volumes by Vernon L. Parrington on *The Colonial Mind* (pp. xvii, 413) and *The Romantic Revolution in America* (pp. xxii, 493). Although the title of the volumes is widely inclusive, the subject-matter dealt with is relatively narrow. There is little or nothing about the literature of the arts, the drama, music, science, or journalism. The emphasis throughout is upon political thought, in spite of the author's academic affiliations with a department of English. For students of historical politics the work is unusually pleasing and worth while. It is doubtful

if any of its readers will agree entirely with the selection of material or with several of the author's conclusions, but it is more than probable that they will read it with enjoyment and criticize it with respect. Though the first volume is devoted mainly to political thought, the treatment of the greatest period of American political thought, 1763-1789, is one of the poorest things in the whole work. Certain of the discussions of particular writers are contributions of genuine insight, but the sweep of the period is lost. Neither the various steps in the development of the theoretical opposition to Great Britain nor the growth of more positive and constructive political ideas and institutions in the state and central governments are adequately suggested. We owe the author gratitude for the many extracts from the sources which he includes in his pages, but some of the most fundamental of source books—especially the journals of state and national legislative and constitutional assemblies—he seems not to have consulted. However, it should also be said that by giving a considerable amount of attention to several Tory controversialists the author has presented a better view of that lost cause than is ordinarily the case with general surveys. *The Romantic Revolution in America* is a fairly accurate title for the literary movements of the period from 1800 to 1860, but it is not a particularly meaningful label to attach to such a varied gallery as that containing portraits of Taylor, Wirt, Calhoun, Marshall, Stephens, Jackson, Kent, and Story. Most of the particular sketches are delightful, although there is again the lack of a clear picture of the developments about and upon which the theories of these men were founded. Professor Parrington announces a volume in the near future dealing with the period since 1860. It will be interesting to see which of the many currents of intellectual expansion during this period he charts for the main stream. Particularly will it be interesting to see whether he is able to discover navigable channels in the confused waters of recent political thought.

B. F. W.

*The Spirit of '76 and Other Essays* (Robert Brookings Graduate School, pp. 135) consists of three lectures delivered before the Brookings School on November 19, 1926, by Professors Carl Becker, J. M. Clark, and William E. Dodd. Professor Becker commemorates that year of miracles by transcribing a mythical manuscript giving an account of the growth of the "revolutionary" temperament in one Jeremiah Wynkoop, a prosperous and rather conservative merchant of New York City. Professor Clark deals with Adam Smith and *The Wealth of Nations*,



and Professor Dodd tells how Virginia took the road to revolution, and particularly Patrick Henry's part in the melodrama. While none of the lectures make any very notable contribution to our knowledge of the subjects, they are by no means to be dismissed as light or unimportant. Much well digested learning is in evidence in all of them, and their literary style is wholly delightful.

Alfred A. Knopf has published an American edition of *The Decline of the West: Form and Actuality*, by Oswald Spengler (authorized translation by Charles Francis Atkinson, pp. 443). Since the appearance of Spengler's book in Germany some ten years ago it has been analyzed, dissected and criticised by a veritable army of historians, philosophers, and sociologists. Though innumerable errors in factual detail have been demonstrated, it still stands almost unchallenged as one of the great works of our time, an outstanding contribution to the philosophy of history and a masterly synthesis of human knowledge. The stress laid on the fundamental individuality and diversity of human cultures, on the morphology of each, and on the inevitable decline of our own civilization opens up large fields for thought and broad vistas for exploration. That the book has not long since been made accessible to the English reader is truly astonishing. The present translation is, on the whole, excellent, and the general get-up is entirely worthy of the work itself.

The announcement of *Der Amerikanische Journalismus*, by Emil Dovifat (Stuttgart: Deutsche Verlagsanstalt, pp. 256), is a happy sign of the reappearance in Europe of an interest in American realities which we hope will eventually supplant the great outburst of general and most unreliable writings on the United States as a whole—the "typical" American, the "soul" of America, and the like. After an historical introduction (which leans perhaps a little bit too heavily upon Villard's book), the author deals with American journalism at the present time. Its various aspects are discussed and the possible effects upon German journalism are evaluated. The author believes that deep-seated preference of the European generally and the German in particular for opinions (instead of facts) will prevent the German newspaper from travelling the same road which the American paper has taken during the last decades—from Greeley to Munsey and Hearst.

*The Revolutionary Spirit in France and America*, by Bernard Faÿ, translated from the French by Ramon Guthrie and published by Har-

court Brace and Company (pp. 613), is a careful study of the subject as revealed in the literature of both countries at the end of the eighteenth century. Memoirs, pamphlets, letters, novels, plays, essays—in short all conceivable types of literature—have been examined and made to yield their contribution to the general fund of evidence. Although primarily in the field of history, the book is a valuable addition to our knowledge of the ideas of politics which were current at a time when theories played an important part in the radical changes in government then taking place. There is a good index, and the many reference notes are collected and placed in the appendix instead of in footnotes.

Francis Delaisi, the author of *Political Myths and Economic Realities* (Viking Press, pp. 446), is one of the foremost among contemporary French economists. In this interesting volume he manhandles a number of the political "myths" which are still doing business in spite of their sheer irrelevance to the actualities. In general, his plea is for a correlation between political thought and twentieth-century facts, more especially economic facts. Five chapters are devoted to "The Myth of Nationality" and an equal number to various formulas which came to the front during the World War and its aftermath. The discussions are not in all cases well organized, and some of them are rather discursive; but the book will prove of real interest to those who are now concerning themselves with the newer concepts of political science.

Professor Harry Elmer Barnes has published a substantial volume entitled *The Evolution of Penology in Pennsylvania* (Bobbs-Merrill Co., pp. 414). A short introductory chapter discusses the importance of the history of penology in general and of the development in Pennsylvania in particular. This is followed by longer chapters on the colonial period, the period from 1776 to 1835, and the period from 1835 to 1927. This shows that in the period from 1776 to 1835 Pennsylvania played a leading part in the movement for the reform of criminal jurisprudence and penal administration, not only in America but also in Europe. After 1835 conditions became steadily worse until 1913, when plans for improvement began to be formulated which have been applied to some extent during the last few years. The work includes a special discussion of prison industry and a chapter on Politics and Prison Administration.

*The Life of Tim Healy*, by Liam O'Flaherty (Harcourt, Brace and Company, pp. 318), is as far remote from the common notion of a biography as is well possible. There is, proportionately, very little of His

Excellency, the Governor-General of the Free State, and that little is seldom complimentary. Call it a book about Ireland by an Irishman who can fight, laugh, and be witty, and one gets a better idea of the book than the title gives. Its historical value is practically naught, but it has originality, spontaneity, and the charm to be found in Irish writing at its best. Much more in line with conventional biography is the eulogy *Alfred E. Smith: A Critical Study*, by Henry F. Pringle (Macy-Masius, pp. 402). This book is an excellent piece of political propaganda. But besides booming the present governor of New York for the presidency, it is useful in that it can explain to those who are not for him the strength that is in the man and the forces that are behind him.

To what extent, and in what spheres of activity, do the excesses of a boom and the repressive influences of a depression leave an imprint upon the social life of the people? This is the problem attacked in Miss Dorothy Swaine Thomas' *Social Aspects of the Business Cycle* (Knopf, 1927, pp. 217). The resulting study, while admittedly limited by the inadequacy of trustworthy data, has been carried out on highly scientific lines and will prove a most valuable addition to the meager literature of the subject. The monograph was awarded the Hutchinson Research Medal by the London School of Economics and Political Science in 1924. Persons interested in the methodology of social research will find it of particular interest.

In his *Buying Power of Labor and Post-War Cycles* (Columbia University Press, 1927, pp. 164) Dr. Asher Achinstein has ingeniously used indices of employment, wages, and production, which have become more abundant since the war, in a study of the proposition that cyclical changes are to be attributed chiefly to the inability of the mass of workers to buy back the products of their labor. The study is confined mainly to factory labor.

*Banking Theories in the United States Before 1860* (pp. 240), by Harry E. Miller, has been published by the Harvard University Press. The study includes not only the theories of bankers, public men, and writers on economics, but also the opinions and prejudices of the general public, and it traces the gradual education of this country in the proper functions of banks and the methods of banking.

The H. W. Wilson Company has published a second edition of what was formerly the *Sociology Section of the Standard Catalogue* under the

title *Social Sciences Section*. This has been compiled by Miss Corrinne Bacon and includes a list of about 1,300 titles of the most useful books on political, social, economic, and educational questions.

*Men of Destiny*, written by Walter Lippman, illustrated by Rollin Kirby, and published by Macmillan (pp. 244), is a heavy dose of editorial writing, consisting partly of reprints of articles which have already appeared in various publications. Mr. Lippman holds forth upon a number of interesting personalities, including Governor Smith, H. L. Mencken, Justice Holmes, and others.

The Godkin lectures, delivered at Harvard in 1927 by President John Grier Hibben of Princeton, have been published by the Harvard University Press under the title *Self-Legislated Obligations* (pp. 40). One lecture deals with "Society and the Individual"; the other with "The Society of Nations."

The Russell Sage Foundation has published a volume on *Postponing Strikes* (pp. 405) by Ben M. Selekman. It is a study of the workings of the Industrial Disputes Act in Canada, commonly known as the Lemieux Act.

George Crompton's new book on *The Tariff* (Macmillan, pp. 226) contains a general survey of the contest between free trade and protection since the time of Adam Smith and summarizes the arguments on both sides.

Robert R. Kuczynski's volume on *American Loans to Germany* (Macmillan, pp. 378) contains a critical analysis of the terms on which Germany has floated American loans since 1923. During these four years Germany has borrowed about a billion dollars abroad, and of this total almost two-thirds has come from the United States. The author of the book is a well-known German financial editor and economist.

A recent text-book for schools is *Citizenship through Problems*, by James B. Edmondson and Arthur Dondineau (Macmillan, pp. 550). It is intended for use in the junior high school grades.

The Vanguard Press has added another book to its Social Science Classics, *Equitable Society and How to Create It*, by Warren Edwin Brokaw (pp. 365). It has also published *The Foundations of Modern Civilization*, by Harrison C. Thomas and William A. Hamm (pp. 257), an historical resumé from prehistoric man to the French Revolution.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

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### AMERICAN GOVERNMENT AND PUBLIC LAW

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# The American Political Science Review

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Vol. XXII

MAY, 1928

No. 2

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## JUDICIAL CONTROL OF OFFICIAL DISCRETION

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When men reflect about government, whether practically or academically, they always turn up, if they think deeply enough, two central problems: first, how to ensure that government shall do what it is supposed to do, and secondly, how to ensure that it shall not do other things. One is the problem of efficiency, the other the problem of control; and around the two is built most, perhaps all, of the so-called science of politics. At some periods the need for control seems the more vital and pressing. It seemed so to Englishmen, for example, during the two centuries following the accession of the Stuarts. At other times and places the pendulum has swung in the opposite direction,<sup>1</sup> and in fifteenth century Europe, as in contemporary Italy, the dominant desire was for government strong enough and untrammelled enough to stem successfully a rising tide of disorder. Each age strikes its own balance in favor of one principle or the other, and thereby touches the opposite principle into action to redress the balance at some new point of readjustment.

### I

The competing claims of efficiency and control have often expressed themselves in the form of controversy concerning the comparative merits of government by discretion and government by law—or, in Harrington's phrase, a government of laws

<sup>1</sup> Cf. W. B. Munro, "The Pendulum of Politics," *Harper's Magazine*, May, 1927, and *The Invisible Government* (New York, 1928), pp. 58 ff.

and a government of men. In this form the conflict has left its mark everywhere on political thought since Aristotle. Discretion means freedom for government to choose among possible alternatives of action. As one judge has said, "In honest plain language it means 'Do as you like.'"<sup>2</sup> It is thus a condition of efficiency, but it is very apt to exact the price of arbitrariness. Law, on the other hand, requires that government shall act by set rule, shall limit itself to a particular way of acting in each particular situation. It seeks to eliminate choice in favor of certainty; it narrows the possible range of governmental action in order that such action may be predicted and controlled in advance.

Aristotle saw more clearly than many of his successors the inherent limitations upon law as a means of controlling government. It is impossible to eliminate from government what Mr. Justice Holmes has called "the sovereign prerogative of choice,"<sup>3</sup> because it is impossible to lay down a rule for everything that it has to do. We may prescribe in advance that government shall compel public utilities to charge reasonable rates for their services, but we cannot prescribe once for all what a reasonable rate is: we must leave it to choice operating upon circumstances. In the language of Aristotle, "law is universal, but it is not always possible to lay down a general rule which shall apply to all cases correctly. . . . This is the reason why not all things can be according to law, because on some subjects it is impossible to make a law, and there must be a special determination from case to case."<sup>4</sup> "As to cases which the law seems unable to determine . . . the law appoints officials and leaves such matters to them to determine to the best of their judgment."<sup>5</sup>

In short, even under a government of laws, room must be

<sup>2</sup> Vice-Chancellor Bacon in *In re Norrington*, 13 Ch. Div. 659. "The term discretion implies the absence of a hard and fast rule. The establishment of a clearly defined rule would be the end of discretion," *Norris v. Clinkscales*, 47 So. Car. 488.

<sup>3</sup> *Collected Legal Papers* (New York, 1920), p. 239.

<sup>4</sup> *Nicomachean Ethics*, v. 10, 4, 6 (1137b).

<sup>5</sup> *Politics*, III, 16, 4, 5 (1287a).



left for the play of governmental discretion; and for the control of this discretion, if it is to be controlled, some agency other than law must be found. It has been found in the last two centuries in political responsibility of government to the governed. Governmental discretion has been robbed of many of its terrors by being subjected at the ballot box to the pressure of those against whom it is exercised. The nature of the governmental impact has been radically altered in direction; from being the impact of the few upon the many, it has largely become the impact of the many upon the few. This alteration has, however, brought perils of its own. The many may arbitrarily impose their will upon the few; and here the usefulness of control by law, so far as law can be made effective, still remains. A second risk is coming to be felt, however, as possibly even greater, i. e., the risk that popular ignorance and apathy will omit to take advantage in the field of government of the new devices and technical improvements which have been made available by the progress of science and experiment, and whose use is demanded by the increasing complexity of the problems with which government has to deal. In other words, observers are coming to insist that government, if it is to be efficient in an age of science, must be "scientific"; and at the same time they are coming to have grave doubts as to how far scientific government and popular government will mix.<sup>6</sup>

Administration by non-political technical experts is the contemporary answer to the challenge to bridge the gap between popular government and scientific government. In increasingly important fields of governmental activity, government impinges finally on the individual through the action of such experts: health officers who employ the methods and apply the standards of medical or sanitary science; building inspectors who are supposed to put into practice the approved results of engineering science; transportation and commercial experts who apply the findings of specialized economic investigations and analyses. The introduction of such expert administration has numerous

<sup>6</sup> William Kay Wallace, *The Passing of Politics* (New York, 1924), pp. 275-276.

obstacles of a political nature to overcome. It is impeded by the tradition of the spoils system, by the dominant emphasis on responsibility to public opinion at the polls, and by the prevalent technique of political practice; but it also meets an important limitation as a result of our tradition of government by law.

Reliance on law as the outstanding instrument of control over government has the necessary effect of elevating the courts into a position of ultimate supremacy. If law is to be effective as a means of control, there must be an agency to apply it and to invalidate or penalize governmental action which runs counter to its precepts. This agency is at hand in the courts. Because of the impossibility of a complete code of written laws supplied to the judges in advance to dictate their decision in every case, and in view of the judicial maxim that the law is competent to supply a rule for all controversies which may arise, a wide latitude is necessarily opened to the courts in shaping and developing the rules which they will apply to determine the validity of acts of other departments of government. This judicial supremacy is the corollary of our Anglo-American doctrine of the "rule of law." Originating in certain accidents of England's constitutional history, the doctrine of the supremacy of law was the earliest weapon seized upon by Englishmen in their resistance to Stuart absolutism at the beginning of the seventeenth century, and hence became fixed as one of the cornerstones of our Anglo-American tradition of civil liberty. Its effectiveness has been made possible by the doctrine that under the common law "every man, whatever his rank or condition, is subject to the ordinary law . . . and amenable to the jurisdiction of the ordinary tribunals. . . . Every official, from the prime minister down to a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."<sup>7</sup> Granting that this statement of Dicey's is in some respects far too broad,<sup>8</sup> it still serves to set

<sup>7</sup> A. V. Dicey, *Law of the Constitution*, 8th ed. (London, 1915), p. 189.

<sup>8</sup> J. H. Morgan, introduction to Gleeson E. Robinson, *Public Authorities and Legal Liability* (London, 1925), pp. xlix-li.

in relief the control which the courts in common-law countries are able to exercise over administration. In so far as it is true that acts of administrative officials in the scope of their duties are subject to be questioned in the courts, it is possible to have the course of administrative policy defined in the final analysis, not by administrative officials themselves, but by the judges. The courts have it in their power, if they choose to exercise the power, to make themselves what Coke wished them to be, "superintendents of the realm."<sup>9</sup>

This is the situation which the newer agencies of scientific and technical administration have to face. The standards which they evolve for general application within their field, the determinations which they reach in specific cases, as a result of supposedly expert technical knowledge and training, must always meet the test of approval by the ordinary courts, which not only are without such specialized equipment, but are trained in an altogether different technique—the technique of common-law legal reasoning. That expert scientific judgment should thus be ultimately subordinated to judicial judgment is by no means the wholly unmixed evil that it is sometimes superficially thought to be. A technical agency dealing constantly with a highly specialized class of problems is always in danger of losing its sense of proportion at the points where its narrow field impinges on wider problems. The very refinement of its judgments often requires them to be touched off into coarser usefulness by reference to broader considerations than those which lie within its special province. The courts, as the agency charged with the application and development of the whole law having a sweep as broad perforce as the needs of society, seem well fitted to adjust the narrower judgment of specialists to the larger considerations which the habits and dominant desires of the community make it necessary or desirable to take into account.<sup>10</sup> But in the exercise of their power to effect such adjustments, they must use extraordinary tact and self-restraint if the special

<sup>9</sup> Campbell, *Lives of the Chancellors*, II, 237.

<sup>10</sup> See my *Administrative Justice and the Supremacy of Law* (Cambridge, 1927), p. 234.

advantages of expert administration are to be preserved unimpaired. This tact is all the more needful because, apart from statutory regulation, and even to some extent in the teeth of such regulation, the scope of the courts' power to disregard administrative policy is almost as wide as they themselves choose to make it. In the words of Professor Powell, "the limitations upon the reviewing power of the courts are and must be, in the last analysis, self-imposed ones."<sup>11</sup>

There was a period in the history of American law when the courts did not seem to appreciate the need for such self-restraint, and when they tended to set themselves up as substantially a board of directors for the administrative system,<sup>11a</sup> instructing finance officers how to keep their funds,<sup>12</sup> revising the audit of claims,<sup>13</sup> and passing upon the comparative merits of different methods of sewage disposal<sup>14</sup> and highway construction.<sup>15</sup> Obviously, law-courts are not fitted for such work,<sup>16</sup> and their

<sup>11</sup> *American Political Science Review*, I, 592.

<sup>11a</sup> "At the same time" [i.e., after the middle of the nineteenth century] "we had developed a system of judicial interference with administration. Law paralysing administration was an everyday spectacle. Almost every important measure of police or administration encountered an injunction. We relied on taxpayers' suits to prevent waste of public funds and misuse of the proceeds of taxation. In many jurisdictions it was not uncommon to see collection of taxes needed for the everyday conduct of public business restrained by injunction . . . . We seemed to have achieved in very truth a *Rechtsstaat*. Our government was one of laws and not of men. Administration had become 'only a very subordinate agency in the whole process of government.' " Dean Roscoe Pound, "Organization of the Courts," printed in *Bulletin of American Judicature Society*, number 6, at p. 2.

<sup>12</sup> *State v. Hopkins*, 12 Wash. 602; *San Francisco Co. v. Brickwedel*, 62 Cal. 641; *Shaw v. Statler*, 74 Cal. 258.

<sup>13</sup> *Bd. of Supervisors of Richmond County v. Ellis*, 59 N. Y. 620; *Mixer v. Manistee Co.*, 26 Mich. 422; *Miller v. Embree*, 88 Ind. 133; *Ferry v. King's County*, 2 Wash. St. 337.

<sup>14</sup> *Evansville v. Decker*, 84 Ind. 325; *Seaman v. Marshall*, 116 Mich. 327; *Ashley v. Port Huron*, 35 Mich. 296; *Louisville v. Norris*, 111 Ky. 903.

<sup>15</sup> *Gould v. Topeka*, 32 Kans. 485; *Dayton v. Pease*, 4 Ohio St. 80; *Prideaux v. Mineral Point*, 43 Wis. 513.

<sup>16</sup> "In planning public works a municipal corporation must determine for itself to what extent it will guard against possible accidents. Courts and juries are not to say it shall be punished in damages for not giving the public more complete protection; for that would be to take the administration of public affairs out of the hands to which it has been entrusted by law." *Cooley, C. J., n Lansing v. Toolan*, 37 Mich. 152.

interference, however meritorious in individual cases, served to impede the efficiency of administration. More recently the courts themselves have apparently perceived this, and in many fields have restricted their interference to narrower limits. Their difficulty, however, has always been to find a satisfactory formula to define the point to which their control may advantageously extend, and beyond which its exercise becomes improper. The need for such a formula—or, if a formula be admittedly impossible, the need at least for a clear and adequate understanding of the principles governing the scope and limits of judicial review—registers one of the most pressing defects of the modern law.

One of the obstacles to the attainment of such understanding is the large number of different, and often contradictory, formulae which the courts have worked out in the past for application to particular situations. The number and variety of these formulae is largely the outcome of historical and procedural accident. The question of the proper scope of judicial review has presented itself in many different types of proceedings and has usually been determined with reference to the special requirements of the situation immediately in hand. The problem of review has thus not been faced as a whole, but has been dealt with piecemeal, resulting usually in a failure to meet squarely the central issues involved. Certain of the established formulae when extended as precedents have tended unduly to restrict the scope of review, while others have tended unduly to broaden it. Most embarrassing of all, however, is the fact that the line has often been drawn on the basis of artificial and abstract considerations which conceal or confuse the substantial issues involved in the basic problem of review.

## II

The courts frequently say that they are without power to revise or correct administrative action.<sup>17</sup> Language to this effect is particularly common in American decisions, where it is

<sup>17</sup> See *Craig v. Leitensdorfer*, 123 U. S. 159; *Decatur v. Paulding*, 14 Peters, 497; *Public Clearing House v. Coyne*, 194 U. S. 497.

thought that to admit the existence of a direct reviewing power in the courts would violate the constitutional dogma of the separation of powers.<sup>18</sup> This denial has, however, the bad effect of serving at the outset to conceal from the courts the real nature of what they do, and by placing it on a fictitious basis, of preventing the reasons for their power from being definitely weighed and understood. Yet in a proper sense there is sufficient ground for saying that the courts do not review administrative action. The statement is true if it means only that, apart from statute, there is generally no direct or immediate appeal possible from an administrative determination to the courts, by writ of certiorari or otherwise. Such an appeal has come to be very generally provided by statute in cases where the advantages of direct review are seen to be clearly superior to those of indirect, but it remains true that no such recourse exists at common law save in the exceptional cases where the administrative action in question is held to be "judicial" in such a strict and narrow sense that certiorari will lie.<sup>19</sup>

The statement that the courts have no power to review administrative action is of value in so far as it emphasizes that along the main line of its descent this power of the courts is indirect—that it springs from the procedural fact, referred to above, that as a general common-law rule it is possible to bring an action for damages against an official like any private person for acts committed by him in the discharge of his duties, and that the legality of those acts thereupon becomes a question for the decision of the courts as essential to the determination of his liability. The courts thus pass on the validity of official acts, not as such, but as a private question of conduct arising in a proceeding between man and man; just as they pass on the constitutionality of statutes, not in the exercise of a power of legislative review, but as an incident of their jurisdiction to decide controversies where the validity or invalidity of a statute happens to be of moment to the decision. In both

<sup>18</sup> *United States v. Ferreira*, 13 Howard 40; *Gordon v. United States*, 2 Wall. 561. See my *Administrative Justice and the Supremacy of Law*, p. 48.

<sup>19</sup> *Ibid.*, p. 43.

instances it only confuses the issue if the substantially revisory effect of the court's action is denied; but it is sometimes useful to emphasize the indirect manner in which it is exercised.<sup>20</sup> It is particularly valuable to emphasize that judicial control over administration grew up as an incident of ordinary civil actions for damages, because it helps to explain how that control has come to be limited at certain points and expanded at others.

The typical illustration of court review of an administrative act in a damage suit is an action for false arrest against a peace officer or an action against a sheriff for levying on the goods of A under a writ of fieri facias against B. These are the instances which give rise to the claim that under our law the individual may have redress in the courts against illegal official acts. It is apparent, however, that the cases just mentioned give no occasion for the courts to review anything which can be described as administrative policy, or to interfere with what can be called the routine conduct of technical administration. All they involve is the examination of an isolated official act of the simplest kind, performed professedly in execution of the ordinary law, to determine its regularity or irregularity, when tested by the rules of that law. But the principle of official responsibility to private persons, if accepted, as our law has in fact accepted it, as a principle of general application, extends of course beyond such simple cases. Suppose, for example, there is a threatened cattle epidemic. Boards of expert veterinarians are authorized by statute to kill infected animals. May an owner of cattle killed by order of such a board ask a court to pass upon whether or not the cattle were diseased, in order to determine the lawfulness of the killing?<sup>21</sup> Superficially, the question is of the same character as the determination in a suit against a sheriff of whether the goods levied upon

<sup>20</sup> Judicial review also occurs in two situations which for the purposes of this paper it is not necessary to distinguish from review in actions for damages: (1) where the administrative agency must enforce its action through proceedings in the courts; and (2) where the administrative agency is allowed to sue for the expense of executing an order after its non-observance by the person to whom it was directed.

<sup>21</sup> See *Miller v. Horton*, 152 Mass. 540.

belonged to A or to B, but the implications are widely different; for if the courts consent to re-examine the question in the former case they will in effect be assuming the very function which for the sake of administrative efficiency was entrusted to experts. The difference in degree from the simple case has become so pronounced as to raise the question whether it is not substantially a difference in kind, calling for a different result.

Inevitably, therefore, the courts find themselves faced in damage suits against officials with the necessity of determining whether they will undertake to review routine administrative acts of a specialized or technical character. In other cases they find it necessary to decide whether they will review the correctness of administrative policy. Suppose, for example, that a municipal corporation, acting on the advice of its engineers, has weighed the advantages and disadvantages of a number of possible plans for sewage disposal, and has made its decision in favor of one which was reasonably supposed to be adequate but which, because of a building boom, became inadequate, and resulted in flooding the plaintiff's premises.<sup>22</sup> Here a determination of the liability of the officials raises the question of the soundness of the administrative engineering program. A similar question is raised where a recovery is sought on the ground that the plan adopted for the construction of sidewalks was defective in making the slope too great.<sup>23</sup> The courts, if they undertake to determine such questions, will be substituting their engineering judgment for that of the official experts.

The obvious desirability of establishing a zone of administrative freedom which the courts will not enter has frequently led to the application of more or less arbitrary rules as grounds for refusal. One of these, which has often been applied in England, is to extend to certain officers of state some share of the

<sup>22</sup> See *Robinson v. Workington Corporation* (1897) 1 Q. B. 619; *Boynton v. Ancholme Drainage and Navigation Commissioners* (1921), 2 K. B. 213; *Atchison v. Challis*, 9 Kans. 603; *Peoria v. Eisler*, 62 Ill. App. 26.

<sup>23</sup> *Urquhart v. Ogdensburg*, 91 N. Y. 67.



immunity of the sovereign from liability.<sup>24</sup> The policy behind this rule is doubtless the wise one which leads the courts to refuse review of administrative acts of a political nature, as for example, when they refuse to examine the correctness of a determination by the executive as to the location of a political boundary<sup>25</sup> or as to the necessity of calling out the militia;<sup>26</sup> but the rule is often so stated that it diverts attention from this question of judicial policy to the artificial question as to which officers of state can properly be held to share sovereign immunity and which can not. Thus in England it is held that the postmaster general is a servant of the crown in such sense as to be exempt from liability for the acts of his servants.<sup>27</sup> The same immunity was extended to certain commissioners charged with

<sup>24</sup> Todd, *Parliamentary Government in England*, 2d ed., vol. I, pp. 494-95. This doctrine is a survival which points back to an illuminating historical development. It used to be said on the authority of Y. B. 33-35 Ed. I (Rolls Series) 471, that "in old times every writ, as well of right as of possession, would lie against the king," Ludwick Ehrlich, *Proceedings against the Crown, 1216-1377*, p. 54, in Vinogradoff, *Oxford Studies in Legal and Social History*, Vol. VI (Oxford, 1921). To same effect *Mirror of Justices* (ed. Maitland, 1893) Bk. I, chap. 3; so also Comyn's *Digest* (4th ed. by Kyd, Dublin, 1793), Vol. I, tit. "Action," C i, p. 140: "Until the time of Edward I, the king might have been sued in all actions as a common person." We now know differently. "There were no writs against the king. We are told so by Bracton," fol. 5b, 171b (Ehrlich, *op. cit.*, p. 26). "Throughout the reign of Henry III we see the principle constantly applied that whatever touched the king must be determined before him" (*ibid.*, p. 23). Furthermore, "in the time of Henry III the king's servants, if their acts which they claimed to be official were complained of, could not be proceeded against in the ordinary way except by the king's permission (special or general). For, right or wrong, their acts were the king's acts and as such could be complained of within the realm only to the king, or to bodies appointed by him for this purpose. . . . But . . . the king was gradually waiving his privilege with regard to the lower officials" (*ibid.*, pp. 110-11). Thus, for example, the Statute of Westminster, II, c. 13, "provided that persons illegally imprisoned by sheriffs should have their action by writ of false imprisonment, as they would have it against any other person" (*ibid.*, *loc. cit.*). The original theory survives in the doctrine that the acts of certain high officials are still the acts of the crown, and so exempt from liability.

<sup>25</sup> *Foster v. Neilson*, 2 Peters. 253.

<sup>26</sup> *Martin v. Mott*, 12 Wheaton 19; *Ela v. Smith*, 5 Gray (Mass.) 121.

<sup>27</sup> *Lane v. Cotton*, 1 Lord Raymond, 646, s. c. 12 Mod. 472; *Bainbridge v. Postmaster General* (1906), 1 K.B. 178.

building a bridge at Chelsea,<sup>28</sup> while it was held not to extend to the corporation of Trinity House, which superintends light-houses and navigation.<sup>29</sup> It is obvious that such an attempt to draw a boundary line between two fixed classes of officials, those who are exempt from liability and those who are not, instead of attempting to distinguish between reviewable and non-reviewable questions, is a highly unsatisfactory way of limiting the sphere of court action, since it necessarily introduces issues having no substantial bearing on the judicial policy at stake. It does not appear to have gained a footing in the American precedents,<sup>29a</sup> although it seems to be generally accepted as law in this country, without much authority one way or the other, that "the president of the United States, the governor of a state, and other high government and state officials are not personally liable in a civil action for their official acts."<sup>30</sup>

Another method by which the English courts have sought to narrow the need for passing on questions of administrative policy has been by establishing a rule, very difficult of application, that civil authorities are liable in damages for *misfeasance*, but not for mere *non-feasance*. Thus in a case where relief was denied, Lord Justice Brett said: "The complaint here is not that injury is caused to the plaintiff by sewers constructed by the defendants being improperly constructed, but that the sewers are constructed in such a manner as, independently of their being in a good or bad state, to bring down sewage into his stream. The complaint, therefore, is of the way in which the sewers bring down sewage, and not of the state of the sewers. . . . I will

<sup>28</sup> *Queen v. McCann* (1868), L.R. 3 Q. B. 677.

<sup>29</sup> *Gilbert v. Trinity House* (1886), 17 Q. B. Div. 795. Cases covering the subject matter of this paragraph are reviewed in detail in Gleeson E. Robinson, *Public Authorities and Legal Liability*, Chap. II. Some confusion results in Dr. Robinson's treatment from an apparent failure to distinguish between liability in contract and liability in tort; but see Todd, *loc. cit.*, note 21 *supra*.

<sup>29a</sup> Cf. *Missouri Pacific R. R. Co. v. Ault*, 256 U. S. 554.

<sup>30</sup> *American and English Encyclopedia of Law*, 2d ed., vol. 23, p. 375; Goodnow, *Principles of the Administrative Law of the United States* (New York, 1905). p. 399.

deal with it as if it were a question of a mandatory order. . . . Ought we to do that unless we can see something definite which the court can direct the defendants to do? In my opinion we ought not do so."<sup>31</sup> On the other hand, in a case where the defendants, by turning new sewers into an old main so increased the flow of sewage as to damage the plaintiff's oyster-beds,<sup>32</sup> and in another where they had opened up a new channel without making it sufficiently deep,<sup>33</sup> their action was held to constitute misfeasance, and recovery was allowed.<sup>34</sup>

These cases illustrate that the distinction between misfeasance and non-feasance, while perhaps relieving the courts from the appearance of dictating affirmative action to administrative officials, does not really relieve them from having to pass on the policy of such action when once taken. While doubtless reducing the number of cases in which the courts must act, the distinction, in addition to being a phantom one, is not practically related to the real point of the difficulty, *i.e.*, the supervision of expert by judicial discretion. This is the crux of the problem and a much more fruitful solution was adopted in certain of the older American cases during the first half of the nineteenth century. This consisted in emphasizing the old distinction between administrative action which is merely "ministerial" from that which is discretionary or "judicial." Only for "ministerial" acts were officials to be held liable in damages; on the other hand, where their action required the exercise of discretion or choice, they were said to act judicially, and therefore to be entitled to the traditional immunity of judges from suit, in the

<sup>31</sup> *Glossop v. Heston and Isleworth Local Board* (1879), 12 Ch. Div. 102; see also *Robinson v. Workington Corporation* (1897), 1 Q. B. 619.

<sup>32</sup> *Foster v. Warblington Urban District Council* (1906), 1 K. B. 648.

<sup>33</sup> *Boynton v. Ancholme Drainage and Navigation Commissioners* (1921), 2 K. B. 213.

<sup>34</sup> For an elaborate review of the cases on the subject of this paragraph, see *Robinson, op. cit.*, Chap. IV. For a similar distinction in the United States *cf.* *Wilson v. Mayor*, 1 Denio (N. Y.) 595 and *Mayor v. Furze*, 3 Hill (N. Y.) 612. In the United States the distinction has come to be confused with that between "judicial" and "ministerial" functions (see *infra*): *Bates v. Westborough*, 151 Mass. 174; *Blizzard v. Danville*, 175 Pa. St. 479.

absence of bad faith or corruption.<sup>35</sup> Such a distinction stretches to the breaking point the conception of "judicial" action.<sup>36</sup> Thus the act of a mayor in calling out the militia was said to be "judicial,"<sup>37</sup> and the term "quasi-judicial" was applied to the action of a municipality in adopting a plan for a sewerage system.<sup>38</sup> Of the latter function Chief Justice Denio of New York said: "This duty is not in a technical sense judicial, for it does not concern the administration of justice between citizens; but it is of a judicial nature . . . for it requires the same qualities of deliberation and judgment. It admits of a choice of means, and the determination of the order of time in which improvements shall be made."<sup>39</sup> Therefore it is "not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land."<sup>40</sup>

<sup>35</sup> *Seaman v. Patten* (N. Y. 1805), 2 Caines, 312; *Easton v. Calendar* (N. Y., 1833), 11 Wendell 90; *Downer v. Lent* (1856), 6 Cal. 94; *Fath v. Koeppel*, 72 Wis. 289. These cases rest apparently on a suggestion of Sir Matthew Hale in *Terry v. Huntingdon*, *Hardres*, 480, as limited by Lord Holt in *Groenvelt v. Burwell*, 1 Ld. Raymond 454. A strong statement of the doctrine is found in *Wilson v. Mayor*, 1 Denio (N. Y.) 595 (1845). There a municipal corporation in grading two public streets, which formed an angle in which plaintiff's property was situated, raised the level of those streets so as to prevent the water from flowing off, whereby damage ensued to the plaintiff, who brought an action of trespass on the case against the corporation. It was held that the action could not be sustained: "Where a duty judicial in nature is imposed upon a public officer, a private action will not lie for misconduct or delinquency even if corrupt motives are charged. The same principle prevails where the party on whom the duty devolves, though not a judge, is clothed with discretionary powers to be exerted according to his sense of fitness or propriety. If such officers act corruptly, they are liable to impeachment or indictment." So in *American Print Works v. Lawrence*, 23 N.J.L. 590 at 600 (1851), the act of a mayor in ordering the destruction of buildings to prevent the spread of a conflagration was treated as "judicial."

<sup>36</sup> Sometimes it led to marked confusion in the minds of the courts. See, for instance, *Ferry v. King's County*, 2 Wash. St. 337, where the court reasoned that since the state constitution vested "judicial power" in a system of courts, the action of an administrative agency could not be "judicial" and therefore must be subject to re-examination and liability in the courts.

<sup>37</sup> *Ela v. Smith*, 5 Gray (Mass.) 121.

<sup>38</sup> *Johnston v. District of Columbia*, 118 U. S. 19.

<sup>39</sup> *Mills v. Brooklyn*, 32 N. Y. 489.

<sup>40</sup> Gray, J., in *Johnston v. District of Columbia*, *supra*.

It is, of course, impossible to draw any such sharp line between administrative action which requires discretion and that which does not. The act of a policeman in making an arrest and the act of a sheriff in making a levy—the typical cases where liability can be enforced in the courts—are both instances of acts which are discretionary in the sense of requiring the exercise of judgment. As a guide to the courts in defining the limits of the reviewing power, the distinction is therefore unsound and misleading. It served, however, one useful purpose: it called attention to the fact that in a growing class of cases the functions performed by administrative agencies are of an actually judicial nature; that is to say, they involve the direct examination and determination of personal and property rights. The licensing board which denies a man a right to practice a profession, the health commissioner who orders the destruction of a man's property, the utility commission which fixes the rates that may be charged by a railroad, are in effect adjudicating property rights in as full a sense as a law court when it grants an injunction or orders the abatement of a nuisance;<sup>41</sup> and that this is realized is shown by the usual requirement that such administrative action shall be taken only after notice and an opportunity for hearing.<sup>42</sup> "Quasi-judicial" administrative action of this kind differs radically from the functions of an old-fashioned officer like a sheriff in making an arrest or levy, and calls for the application of different methods and principles of review.

### III

The doctrine that administrative officials are not liable in damages for "judicial" or "quasi-judicial" acts, coupled with an extremely broad interpretation of the word "judicial," for a time tended to diminish the exercise of judicial review in actions for damages.<sup>43</sup> Doubtless this had the effect of indirectly stimulating the provision of more direct and satisfactory methods of review, especially review by certiorari. There are many of the newer types of administrative action which a subsequent

<sup>41</sup> See my *Administrative Justice and the Supremacy of Law*, pp. 15-25.

<sup>42</sup> *Ibid.*, pp. 106-108, note.

suit for damages obviously affords no suitable or satisfactory opportunity to correct. This is true, for example, of a rate-fixing order of a utilities commission or of an order of a corporation commissioner regulating the financial structure of a corporation. In such cases it is impossible to estimate damages, and relief, if it is to be had at all, must be had before the taking effect of the order. The most effective way of providing such relief is by immediate appeal from the administrative tribunal to the courts, and the way was paved for such direct appeal, in spite of the separation-of-powers doctrine, when it came to be frankly recognized that administrative action can be in substance "judicial."

There is another advantage of such direct review which is not easily obtainable in common law actions for damages. Direct review, being in the nature of an appeal, affords the advantage of appellate procedure in that the scope of the review is limited to the points on which law-judges are equipped to be helpful. In appellate proceedings the whole case is ordinarily not open for revision, but review is as a rule limited to what are known as "questions of law." Such limitation of the scope of review is particularly desirable where the administrative action involved is substantially judicial in character, and where the officials discharge, in effect, the functions of a special tribunal of experts.<sup>44</sup> In such cases it is of the utmost consequence that what are known in law as the "findings of fact" made by the experts should only rarely be disturbed. The chief usefulness of such an expert body is as an agency for applying trained specialized judgment to evidence of a technical character, and this judgment is embodied in the weight and importance attached to such evidence and in the conclusions drawn by the experts therefrom. These conclusions, therefore, if they are to serve their purpose, ought not, in general, to be subjected to revision by a non-expert body.<sup>45</sup> The Interstate Commerce Com-

<sup>43</sup> See the language of the opinion in *Green v. Mayor* (1849), 6 Ga. 1.

<sup>44</sup> The courts have sometimes frankly referred to them as such, e.g., in *United States v. Commissioner*, 5 Wall. 563; *Johnson v. Towsley*, 13 Wall. 72.

<sup>45</sup> See language of the court in *Steenerson v. Great Northern R. Co.*, 353 at 737, quoted in my *Administrative Justice and the Supremacy of Law*, pp. 72-73;

mission was crippled for years by the fact that its findings could be overhauled in subsequent equity proceedings in the courts.<sup>46</sup> The Federal Trade Commission stands in some such danger today.<sup>47</sup>

Direct appellate review of administrative determinations, whether by means of certiorari or otherwise, affords a far better opportunity for thus defining the points to which review can profitably be limited than is possible in an ordinary tort action for damages. In such an action the question of liability is tried before a jury, with a consequent tendency to throw open to re-examination all questions, including questions of fact, which have a bearing on whether or not the official act complained of was justified. The effect is frequently to subject the findings of the experts to the lay opinion of the twelve men in the box. This is illustrated by such a case as *Miller v. Horton*,<sup>48</sup> where a health-board's finding that horses were afflicted with glanders was overruled by a jury's opinion that they were not, in an action brought against the board for wrongfully putting the animals to death. The reason for such a result where review takes the form of a collateral action for damages against the official is doubtless largely historical. In the ordinary type of situation in which such damage suits grew up, the kinds of administrative action involved were not quasi-judicial, nor were the officers supposed to be experts. An officer like a sheriff held no hearing and made no findings. The finding of facts was, therefore, necessarily the task of the jury in the review proceeding, if there was to be a finding of the facts at all. In consequence, the re-examination in court of the facts on which the officials had acted came to be the rule. The obvious inconveniences which resulted were met, not by attempting to distinguish between the reviewable and non-reviewable points in a case, but by denying review altogether in those classes of cases where a complete re-examination would be clearly embarrassing, and by allowing it to

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*Granville v. Gregory*, 83 Mo. 123, in *ibid.*, pp. 60-61; and *White*, C. J., in *United States v. Louisville & Nashville R. Co.*, 235 U. S. 314, in *ibid.*, p. 162.

<sup>46</sup> *Ibid.*, p. 72, note.

<sup>47</sup> *Ibid.*, pp. 248-250.

<sup>48</sup> 152 Mass. 540; *Lowe v. Conroy*, 120 Wis. 151.

the full extent in the remaining cases.<sup>49</sup> This is doubtless one of the underlying explanations for the involved attempts of the English courts to draw a sharp line between officials who are subject to liability and those who are not, and between official acts upon which liability can be founded and those upon which it cannot be. Most of these distinctions, however, are unprofitable and artificial. Their effect is to preclude the right of review completely in some cases, while enlarging it unduly in others. But they are a natural consequence of the fact that judicial review took the typical form of a collateral personal action for damages. The introduction of direct methods of review, following the lines of appellate procedure, was necessary before any fruitful attempt could be made to develop correct principles of review.

The introduction of direct review procedure did not, however, follow until long after the American courts had adopted the doctrine that discretionary administrative action was "judicial," and so beyond the reach of civil liability. For the most part, it had to await the later development of such relatively modern administrative agencies as utilities commissions, civil service commissions, and industrial accident boards. In the interval there was a period lasting to about the close of the Civil War when court control of administrative discretion seems to have been, on the whole, relatively slight.<sup>50</sup> In this period the influence of the separation-of-powers doctrine was still strong, the damage suit was still the only common avenue for review, and this was foreclosed wherever the administrative action at issue was held to be discretionary, and so "quasi-judicial." But immediately following the Civil War there arose, as we know, a widespread tendency on the part of our courts to emphasize private rights against governmental encroachment, and a part of this tendency expressed itself in increased willingness to hold officials liable in damages. The judicial immunity of

<sup>49</sup> *Supra*, p. 286.

<sup>50</sup> Compare the general effect of such cases as *Van Wormer v. Mayor* (N. Y., 1836), 15 Wendell, 262; *Green v. Mayor* (1849), 6 Ga. 1; *Downer v. Lent* (1856), 6 Cal. 94; *Cary v. Curtis* (1845), 3 How. 236.



administrative officers was accordingly cut down at important points.<sup>51</sup> This process developed doctrines which were already deeply rooted at the time of the introduction of more direct methods of review, and which have often been carried over, not always happily, to govern the application of the latter.

The inroad on the doctrine of judicial immunity for discretionary official acts was made largely, although not altogether,<sup>52</sup> by raising the question of the limit of jurisdiction. Judicial immunity protects a judge of limited jurisdiction only for acts done within the proper scope of that jurisdiction; when he purports to act judicially, but steps beyond the allotted bounds of his jurisdiction, his proceedings are said to be *coram non judice*, and he is liable in damages as a trespasser for any injury which results.<sup>53</sup> This principle had been discussed in the early English cases as affording a test to determine the liability of administrative officials,<sup>54</sup> and it had sometimes been applied in the case of justices of the peace<sup>55</sup> and other minor judicial officers.<sup>55a</sup> It has been sharply criticized, and some courts have ruled that justices of the peace and other inferior judges are properly entitled to the same judicial immunity for acts in excess of jurisdiction which protects the judges of the superior courts.<sup>56</sup> In any event, where the jurisdiction of a justice of the peace to take action depends on the existence of a fact the determination of which forms an essential part of the proceeding

<sup>51</sup> *McCord v. High* (1868), 24 Ia. 336; *Cubit v. O'Dett*, 51 Mich. 347; *Mechem on Public Officers*, §642.

<sup>52</sup> In the cases cited in the last note, the ground of liability alleged was the absence of any other remedy for the redress of the injury to private rights.

<sup>53</sup> *Sir Matthew Hale* in *Terry v. Huntingdon*, Hardres 480; *cf.* case of the *Marshalsea*, 10 Coke Rep. 68b; *Hill v. Bateman*, Str. 711; *Shergold v. Holloway*, Str. 1002.

<sup>54</sup> *Terry v. Huntingdon*, *supra*; *Groenvelt v. Burwell*, 1 Lord Raymond 454, also reported in 1 Salkeld 263 and 12 Modern 386.

<sup>55</sup> *Baldwin v. Blackmore*, 1 Burr. 595; *Cripps v. Durdin*, Cowp. 640; *Groome v. Forrester*, 5 M. & S. 314; *West v. Smallwood*, 3 M. & W. 420.

<sup>55a</sup> *Miller v. Seare*, 2 Wm. Bl. 1145; *Perkin v. Proctor*, 2 Wilson 283; "where there is no jurisdiction, there is no judge."

<sup>56</sup> *Calhoun v. Little*, 106 Ga. 336; *Thompson v. Jackson*, 93 Iowa 376; *Robertson v. Parker*, 99 Wis. 652; *Beu v. McKinney*, 62 Miss. 187.

before him, he will not be held to have exceeded his jurisdiction merely by reason of an erroneous determination that the jurisdictional fact exists.<sup>57</sup> In such a case it has been said that "the power to decide protects, though the decision be erroneous."<sup>58</sup>

The doctrine of liability for excess of jurisdiction was extended to administrative officials; but, in the case of such officials, it was frequently held that jurisdiction was exceeded if in the opinion of the reviewing court there was an erroneous determination of a jurisdictional fact. The power to decide did not give protection in the event of an erroneous decision. In order to determine liability for a discretionary administrative act, it therefore was competent for the courts in a damage suit against the officer to re-examine his determinations of fact as to those matters on which the court regarded his jurisdiction as dependent; and if the court reached the view that such facts did not exist, he was held liable. A very broad field was thus once more open for review by the courts. Suppose, for example, that a statute vests a health board with power to kill diseased animals. The statute may be regarded as limiting the jurisdiction of the board to animals actually diseased, and as giving it no authority over healthy animals. On this view, the question of whether the animals killed were actually diseased becomes a jurisdictional fact, and so a matter of determination by

<sup>57</sup> *Grove v. Van Duyn*, 44 N. J. L. 654; *Cave v. Mountain*, 1 M. & Gr. 257; but in many cases no such distinction appears to have been drawn. See also *Gwynne v. Poole*, 2 Lutw. 387; *Kemp v. Neville* 10 C.B. (N.S.) 523 at 550; *Britton v. Kinnaird*, 1 B. & B. 432.

<sup>58</sup> *Lange v. Benedict*, 73 N. Y. 12 at 33; see especially pp. 27-31. See also *Hunt v. Hunt*, 72 N. Y. 217 at 229: "Jurisdiction of the subject matter is power to adjudge concerning the general question involved and is not dependent upon the state of facts which may appear in a particular case under that general question." "A magistrate who commits a party in a case where he has not any jurisdiction is liable to an action of trespass; but if the charge be of an offence over which, if the offence charged be true in fact, the magistrate has jurisdiction, the magistrate's jurisdiction cannot be made to depend upon the truth or falsehood of the facts, or upon the evidence being sufficient or insufficient to establish the *corpus delicti* brought under investigation," Selwyn's *Nisi Prius* (7th Amer. from 11th London ed., Phila., 1857), vol. II, p. 920, citing *Cave v. Mountain*, *supra*; *Rex v. Bolton*, 1 Q. B. 75.

the court,<sup>59</sup> although it is precisely the question which efficient administration requires should be left to the experts. The doctrine of jurisdictional fact thus opened the door to the unduly broad review which had been foreclosed by the original doctrine that the exercise of administrative discretion was protected by judicial immunity. It had the further disadvantage of leaving always to the courts to determine what facts were jurisdictional. Thus in one case the Supreme Court has said that the Interstate Commerce Commission has no jurisdiction over reasonable rates.<sup>60</sup> If this dictum should be followed out to its conclusion, as of course it will not be, it would mean that if the court should reach a different conclusion from that of the commission as to the reasonableness of a rate, the commission's determination would have been in excess of jurisdiction and therefore void. The doctrine of jurisdictional fact is the most unfortunate heritage from the older type of indirect review to the newer types of direct appellate review.

Of these, the most important is review by the writ of *certiorari*, the traditional common-law method of removing proceedings for purposes of review from inferior tribunals into the courts of superior jurisdiction. The proceeding is substantially in the nature of an appeal,<sup>61</sup> and is heard and decided by the court without a jury. The way was prepared for the application of this writ to administrative determinations by a number of early precedents and by the doctrine that discretionary administrative acts are of a judicial nature. Nevertheless its availability for review of administrative action has generally had to await specific statutory authorization. Under such statutes it has become, in the state jurisdictions, perhaps the most usual method for reviewing the orders of public utilities commissions, civil service commissions, industrial

<sup>59</sup> This view was rejected by Lord Holt in *Groenvelt v. Burwell*, 1 Lord Raymond, 454. It was applied by Lord Kenyon in *Warne v. Varley*, 6 Durnford & East 443, because of the special wording of a statute.

<sup>60</sup> *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88. For use of the doctrine of "jurisdictional fact" to reach a desirable result, see *Ng Fung Ho v. White*, 259 U. S. 276.

<sup>61</sup> *Groenvelt v. Burwell*, 1 Lord Raymond, 454.

accident boards, and similar agencies. It is obviously applicable, however, only to administrative action taken in judicial form after a hearing, or where there is at least a record upon which the writ can act. It is thus not available for review of administrative action taken in the exercise of powers of summary enforcement.

For some reason, certiorari has not secured a footing among the ordinary forms of review available in the federal administrative system.<sup>62</sup> Its place is there supplied in the most important instances by statutory forms of injunction. The injunction proceedings by which orders of the Interstate Commerce Commission, the Federal Trade Commission, and the postal authorities are tested in the courts are, however, like certiorari proceedings, substantially appellate in character; and the courts are limited, or have usually limited themselves, to the consideration of questions properly arising on appeal.

Finally, standing more or less apart from other methods of review, are mandamus and habeas corpus proceedings. The importance of the latter is practically limited to the review of determinations of federal immigration officials. The use of mandamus, while available in a much larger variety of cases, is narrowly restricted both by historical accident and by judicial policy. The policy seems clear. Where the law allows a field of discretion to an administrative agency, there may be a number of possible ways in which that discretion can legally be used, and the effect of mandamus would often be to compel its exercise in one particular way. To issue the writ in such a case would amount to an assumption by the courts of the task of dictating the policy and directing the discretion of an executive agency. Or, again, a negative decision reached by an ad-

<sup>62</sup> See *Degge v. Hitchcock*, 229 U. S. 162, where the Supreme Court said: "It is true that the postmaster-general gave notice and a hearing to the persons specially to be affected by the order, and that in making his ruling he may be said to have acted in a quasi-judicial capacity. But the statute was passed primarily for the benefit of the public at large, and the order was for them and their protection. That fact gave an administrative quality to the hearing and to the order, and was sufficient to prevent it from being subject to review by writ of certiorari."

ministrative body on a ground complained of as improper might perhaps equally well have been reached on a proper ground. In such a case the courts cannot assume that the administrative body acted on the improper ground so as to justify issuing the writ. Doubtless these reasons of policy are, however, strengthened by purely historical considerations. It was in mandamus proceedings that the American courts seem first to have become aware that they were being asked to review administrative discretion. They took cover under an attempted distinction between direct review by mandamus and indirect review in a damage suit, Chief Justice Taney saying: "If a suit should come before this court . . . the court certainly would not be bound to adopt [the determination made by] a head of a department, and if they supposed his decision to be wrong, they would of course so pronounce their judgment. But their judgment . . . must be given in a case in which it is their duty . . . to ascertain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the secretaries nor revise his judgment in any case where the law authorized him to exercise discretion and judgment."<sup>63</sup> The shadow of this decision has fallen across the use of mandamus even in cases where there would seem to be no policy against issuing the writ.<sup>64</sup>

The introduction of direct methods of review has made it at once imperative and possible, as it was not imperative under the indirect system, to consider frankly the policy involved in judicial control over administration. The essence of that policy, as we saw at the outset, is to maintain law as an agency of control over governmental discretion. This end is not furthered by the mere substitution of the opinion of the judges for the opinion of administrative experts as to issues and matters peculiar to individual cases. Such substitution does not subordinate discretion to law; it simply sets the discretion of an un-

<sup>63</sup> *Decatur v. Paulding*, 14 Peters, 497.

<sup>64</sup> But for a willingness to employ the writ in a proper case, see *Board of Dental Examiners v. People*, 123 Ill. 227; *State Board v. White*, 84 Ky. 626; *State v. Adcock*, 206 Mo. 550.

qualified agency in the place of a qualified one. It piles one discretionary authority on top of another. The subordination of discretion to law means its subordination to rules of a stable character and of general application. Therefore the first consideration which should go toward determining the scope of judicial control is that it should be limited so far as possible to the enforcement of general rules. The discretion of the judges will be sufficiently employed in evolving and applying such rules, without attempting to revise expert determinations of special questions of fact.<sup>65</sup> Evaluations of evidence and conclusions of fact are essentially a matter for administrative discretion as distinguished from law, and, when so understood, clearly belong, even under the rule of law, to the officials. The courts, if left free to revise administrative determinations on no more accurate grounds than their private opinions as to the facts of particular cases, not merely will substitute untrained for technical judgments, but will also inevitably overlook that laborious development of general rules which under a sound division of labor is their proper task.<sup>66</sup>

Under direct appellate review procedure, the limitation of court review to questions of law, including, of course, the question of whether the administrative finding was within the bounds of rationally possible inference from the evidence, is relatively easy. This does not mean, however, that it takes place automatically. The influence of the inherited doctrine of jurisdictional fact constantly tempts the courts in injunction and certiorari proceedings to re-examine and reach their own conclusions upon issues which have no connection with legal rules.<sup>67</sup> This tendency can be checked, up to a certain point,

<sup>65</sup> "A judge ought to act conformably to law and not according to discretion," Comyn's *Digest* (4th ed., by Kyd, Dublin, 1793), vol. IV, p. 435, tit. "Justices," I, i.

<sup>66</sup> See my *Administrative Justice and the Supremacy of Law*, pp. 200-202.

<sup>67</sup> Compare the remarkable decision in *Ben Avon Borough v. Ohio Valley Water Co.*, 253 U. S. 287 (1919), where the Supreme Court apparently held that court review on the facts is a matter of constitutional right, at least on certain issues of a technical character which have a bearing on constitutionality.

by statute; it can be completely checked only by the tact of the courts themselves, and by their understanding of the nature and purpose of their part in the administrative process.

Direct review is, however, not applicable to all types of administrative action. It can be applied only in those cases where the administration holds a more or less formal investigation and makes findings which can constitute a record for the reviewing court. Where the administrative action is summary, and based on no formal finding of facts, the old method of indirect review by an action for damages remains the only available channel of relief. This is the case, for example, where a health board has summarily destroyed property on the grounds of immediate danger of disease. Here the court can obviously not be bound by administrative findings, since in a formal sense there are none. But it does not necessarily follow that the officials' opinion of the facts, as disclosed by their action, should be completely open to be re-examined and disregarded by a jury. It would seem that in such cases, at least where the question is one for expert or technical judgment, the jury should be limited to the question of whether the officials acted in good faith, i.e., with reasonable and probable cause.<sup>68</sup> Adequate protection would thus be afforded to the interests of the injured individual without subjecting technical conclusions to the untrained judgment of a jury.

Where summary haste is not required, the largest opening for improvement in the existing procedure is to extend the requirement of notice and hearing as a preliminary to administrative action.<sup>69</sup> This would have two advantages: first, the advantage of fair play to the person whose rights are affected, and, secondly, the advantage that it would pave the way for direct rather than indirect review.<sup>70</sup> This result, eliminating

<sup>68</sup> This is substantially the rule followed in the older cases which went on the ground of "judicial" immunity; see also *Raymond v. Fish*, 51 Conn. 80; *Forbes v. Board of Health*, 28 Fla. 26; *Seavy v. Preble*, 64 Me. 120.

<sup>69</sup> See Goodnow in *Rep. Amer. Bar Assoc.* (1916), xlvi, 414.

<sup>70</sup> This would obviate such as a decision as *People ex rel. Copcutt v. Board of Health*, 140 N. Y. 1.

the part which in a damage suit must perforce be played by the jury, is especially desirable in all cases of action requiring specialized official judgment.

One final note of caution is necessary. In all that has been said the expertness of expert administrators has been taken for granted. As matters stand, it may be doubtful whether the assumption is fully in accord with the facts. A recent enumeration mentions a commissioner of health in an American city who was a harness-maker; a public utilities commissioner who was a barber; a commissioner of sanitation who was a house-mover; and another commissioner of health who was an undertaker.<sup>71</sup> The correction of this state of affairs rests, not with the courts, but with the appointing or electing power. The law, however, inevitably adapts itself to the conditions which it finds, and before we insist that expert administration be relieved from hampering interference by the judges, we should make sure that its expertness is above suspicion.

<sup>71</sup> Raymond B. Fosdick in *New Republic*, xxvi, 152.



## THE POLITICAL BUREAUCRACY OF FRANCE SINCE THE WAR

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To comment upon the far-reaching effects of modern warfare upon national life is in these days commonplace. Nevertheless, nearly ten years after Versailles, countless ramifications of the World War's long-term effects remain unexplored. Silent but profound social and political readjustments were set in motion which are only now beginning to be studied by trained observers of human institutions, while the public at large scarcely suspects what is going on.

The administrative organization of France has not escaped these subtle processes. A bureaucratic inheritance surviving a half-dozen political revolutions, it has perhaps been more deeply shaken by events of the last fifteen years than in any period of similar length since the French Revolution itself. Some of these changes bid fair to modify not only the popular attitude toward the ubiquitous *fonctionnaire*, but the organization and spirit of the civil service as well.<sup>1</sup>

For a proper understanding of the causes and significance of this administrative evolution, we must revert for a moment to the scene as it appeared in 1914. Then the public service of France was a highly centralized hierarchical organization, with a democratic façade, but resting none the less upon the imperial foundations laid by Napoleon. There were as many as 900,000 persons in public employment, including the staffs of the *départements* and the communes.<sup>2</sup> As in America to-day, the man in the street was sure this number was excessive. He remembered, doubtless, that France had done very well with 40,000

<sup>1</sup> The pages that follow are based upon materials gathered and direct observations made by the writer during a two-year sojourn in France (1920-22), and again during the year 1927 as traveling fellow of the Social Science Research Council.

<sup>2</sup> Less than 700,000 were on the payroll of the central government.

civil servants in Balzac's day, when the population of the country was only a fourth smaller than in 1914. Why, then, were twenty times as many needed in the twentieth century? As a matter of fact, the French public service made use of a staff which was, in proportion to population, no larger than the English or the American, especially if it be remembered that over 150,000 public school teachers and several thousand telegraph and telephone employees were among the 900,000 civil servants mentioned.<sup>3</sup>

But the Frenchman also grieved, and justifiably, because this administrative machinery, carried over largely from past political régimes, handled his business with exasperating slowness; because his inquiries and requests for service were frequently left to gather dust in the antiquated wooden files of a ministry in Paris; because red tape was seemingly endless; because, in short, the governmental affairs of the nation were subject to excessive control and tutelage by the capital. The causes of these grievances are too well known to students of comparative political institutions to need any elaboration here. It is not so widely known, however, that most of the public personnel was recruited, not only from the solid bourgeoisie, but, geographically, from that part of France—the region south of the Loire—least touched by modern industrial development. Nearly every middle-class family in southwestern France and the *Midi* looked forward to placing at least one son in the service of the state; this, in spite of the fact that the state was a niggardly paymaster. Why? Mainly because a government post met the average Frenchman's urgent desire both for social prestige and for security of economic position.

Signs of discontent began to reach the surface of French politics as early as 1906. Industrial wages and salaries had doubled since 1850, but the government's scale of compensation to its employees had increased by only insignificant amounts. Recruitment for most of the posts above the lowest rungs of the

<sup>3</sup> Cf., for interesting comparative data on the size of national civil services in Europe, *Le Bulletin de la Statistique générale de la France*, July, 1922.

administrative ladder involved a rigorous examination covering too wide a range of scholastic knowledge for the scope of duties and responsibilities likely to be required of the appointees for years after entry into governmental employment. Promotion, at best, came very slowly, and especially after the Dreyfus case let loose its insidious poison upon French politics, it was frequently thwarted by family or religious or partisan considerations. What had appeared like "*le paradis*" on the outside often proved to be "*l'enfer*" on the inside, a place of routine stagnation, with little stimulus or outlet for the latent initiative and resourcefulness in the élite of a nation's youth.

Notwithstanding the timid steps toward territorial decentralization taken in certain statutory measures passed after 1870, Paris could still meddle, when the present century dawned, in some of the most minor details of provincial and municipal administrative policy.<sup>4</sup> Hierarchical control by way of the ministry of the interior and the prefects was largely responsible for perpetuating the traditional bureaucratic notion that conformity to the regulations in *all* cases was the essence of successful (and to the *fonctionnaire* least troublesome) administration. The whole system, as M. Herriot once illuminatingly expressed it, was an imperial mosaic, growing more and more out of harmony with the spirit of the republican constitution of the country. And one remembers the celebrated boast of a French minister of education that it was then three o'clock, and all the pupils in the third grade throughout France were composing Latin verse!

These shortcomings aside, French pre-war public administration had its admirable qualities. It was justly noted for its high standard of integrity, for the superior technical preparation of its scientific and professional staff, and for the extent to which it utilized university specialists and teachers in the upper reaches of the scale. Nowhere could one find a higher level of culture among public administrative officers. Whatever

<sup>4</sup> Among these decentralizing or "deconcentrating" measures the most important were the law of 1871 (applying to the *départements*), and that of 1884, known in France as the "municipal code."

might be alleged about the slow-moving habits of French bureaucracy, or about its seeming obliviousness to the public's convenience, it was, after all, the civil service that served to mitigate the harmful effects of ministerial instability and partisan intrigue in the parliamentary régime.

The discontent referred to above had manifested itself in two interesting movements for administrative reform. The first was known as "regionalism," or territorial decentralization by creating twenty-five or more regional districts between the central government and the local centers, with a view to reviving some of the historic vitality of the old French provinces and at the same time reducing congestion and excessive control at Paris. The other movement, i.e., administrative syndicalism, sprang from the ranks of state servants themselves and proposed a functional decentralization of authority by bringing the personnel of all grades directly into the business of determining administrative policies.<sup>5</sup> Limitations of space will not permit us to deal with the regionalist movement, except merely to say that there was much agitation and that an abundant literature on the subject appeared, but without leading to any action. The second phenomenon, however, is of vital significance, for it marked the beginnings of a campaign among French public employees which has not ceased to this day, but on the contrary is steadily growing stronger.

The miserably paid *fonctionnaire*, spurred on by skillful leaders who were strongly influenced by the industrial syndicalism of Georges Sorel and his school, developed a professional organization which, by 1911, included 500 associations, federated in turn into sixteen *groupements*-units, whose membership absorbed at least two-thirds of the public personnel of France. This movement may be termed a revolt, not merely against the

<sup>5</sup> French books and brochures on both of these movements are legion. On regionalism the most complete accounts are Charles Brun, *Le Régionalisme* (Paris, 1911), and M. Bellet, *Rapport parlementaire, Chambre des Députés*, ann. s. o. 1923, No. 6144. On administrative syndicalism probably the best treatment of the pre-war period is Georges Cahen, *Les Fonctionnaires* (Paris, 1911). There is no satisfactory general account of developments since the war.

deplorably low salary scales then in effect, but also, and perhaps more strikingly, against the pernicious practice of parliamentary politicians interfering with civil service appointments and promotions.<sup>6</sup> As the ultimate weapon of attack upon the "bourgeois state," the strike was proposed, and unsuccessful strikes of groups of postal workers took place in 1906 and 1909. Despite demands from the socialists in Parliament, made repeatedly during the decade ending with the war, no legal recognition of the right of public employees to strike under any conditions was granted.

In point of fact, the overwhelming majority of civil servants were not primarily interested in strikes or in the flamboyant slogans, "the postoffice to the postmen," and "the schools to the school teachers," employed by the doctrinaire agitators in the movement. What the rank and file wanted was the establishment of a general personnel code which would guarantee appointments on the merit basis and insure promotions regularly and without favoritism or political interference. The *petits fonctionnaires* felt that they had just grievances which could get no hearing inside the "hierarchical oligarchy" that ruled the central administrations. But by insisting upon the insertion of a clause outlawing the strike, upon which the dominant leaders of the civil service staff associations would not yield, every cabinet from 1906 to the war was able to defeat proposals for a general statute setting up rules of recruitment, promotion, and discipline uniform for all administrative services of similar character. This question was still in suspense in 1914, although an increasing number of ministries had individually put into operation by decree a definitive procedure governing appointments and advancement and affording certain important guarantees against *l'arbitraire*, the gist of which at least partially satisfied the syndicalist leaders. In addition, electoral pressure by the larger staff associations (postmen, *instituteurs*, etc.) upon candidates for the Chamber of Deputies was enough to wring

<sup>6</sup> While this was the nearest French approach to our American spoils system, it was less pervasive and more a matter of seeking and granting family and personal favors than of strict partisanship.

from the government a reluctant promise to adjust to the rising cost of living salary schedules that had remained virtually unchanged since 1850. By 1914 substantial increases had actually been voted to the postal employees and a few other small groups of civil servants.

Even if the outbreak of war had not interrupted these piecemeal reforms, changing economic and social conditions in France would have compelled something more drastic. For it was already becoming difficult to attract competent men into many of the important state services, such as the ministries of finance and public works. In occasional instances the number of candidates at competitive examinations had dropped to fewer than the number of vacancies to be filled, whereas ten years earlier eighty candidates for one vacancy had actually presented themselves.<sup>7</sup> In its issue of May, 1913, *La Tribune du Fonctionnaire* called attention to the ominous fact that young men were then competing for the public service in the spirit of looking for a *pis-aller*, and that desertion from public employment was becoming alarmingly frequent, not only at the base, but at the top of the scale as well. It concluded by pointing out the anomaly of the government's proposal of a credit of 500 million francs for the fabrication of war materials, while evincing no serious interest in the critical predicament of its own employees.

The impact of war could only aggravate the crisis in the government services. On the one hand, as the state extended its control over multitudinous aspects of the economic life of the nation, departmental staffs had to expand numerically while they deteriorated qualitatively. Scores of more or less permanent committees, councils, "offices," and so on, were set up to advise and accelerate the slow-acting administrative departments.<sup>8</sup> For the first time, women were admitted in large

<sup>7</sup> P. Harmignie, *L'État et ses Agents* (Paris, 1911), p. 235, and *La Tribune du Fonctionnaire*, May and October, 1913.

<sup>8</sup> Cf. P. Renouvin, *Les Formes du Gouvernement de Guerre* (Paris, 1927), pp. 51-92, for an excellent summary of the war-time expansion of state services in France.

numbers to public employment, and all too often they entered upon their duties without any technical preparation. For a time syndicalist agitation among the civil servants was suspended for patriotic reasons, but the economic dislocation soon forced the rank and file of the government staffs to renew pressure upon the government for some sort of relief. All they obtained was a small cost-of-living bonus that only partially compensated for the decline in the value of the franc which began slowly but certainly in the later part of 1915. Loyalty to their obligations toward the harassed nation, however, kept all classes of civil servants from resorting to strikes or other weapons of urgent insistence against the government; so that the termination of hostilities found the mass of civil servants in economic straits already serious and destined to grow steadily worse during the disturbed years that have followed since the peace.

That this crisis has been terrible no one can doubt who has recently visited the shabby, impoverished-looking, care-worn men and women who sit behind the desks in those spacious, but dimly-lighted, government buildings in the French capital. During the spring and summer of 1927 the writer had occasion to discuss the human aspects of this crisis with more than sixty civil servants of all ranks, ranging from subaltern postal employees and *instituteurs* to middle-grade clerks, and then on to the bureau chiefs and directors at the summit of the administrative pyramid. With varying emphasis and degrees of bitterness, they all told the same dreary tale of a hand-to-mouth existence, of being forced to resort to all sorts of thrifty subterfuges in order that their families might have even the barest necessities of life. In the cities, where the situation is naturally worse than in the rural communities, it has not been uncommon for the families of subaltern state employees, like letter carriers and copying clerks and customs inspectors, to have to content themselves with one meal a day for weeks at a time. There have been several instances of cultured *lycée* professors turning taxi drivers. Bureau chiefs and teachers in schools and universities have been obliged to piece out their insufficient salaries by giving private lessons, doing miscellane-

ous public lecturing, or resorting to "hack" journalistic writing, although many of these higher officials have neither the time nor the taste for this outside work.<sup>9</sup> In thousands of middle-class homes where the chief breadwinner is employed in a government department, many of the simpler modes of recreation and cultural development, such as the theatre and concerts and books, are no longer within the reach of the meagre household budget. Despite traditional French thrift, hundreds of these families have been reduced to a condition that one could scarcely dignify as that of "shabby gentility." Small wonder, then, that last year brought forth scores of protest meetings, both in Paris and elsewhere, called by embittered civil servants, and that these spirited gatherings often gave voice to earnest proposals for concerted pressure upon the government for the immediate redress of grievances.<sup>10</sup> Small wonder, too, that strikes were more than once threatened and that several temporary local strikes, especially in the postal, telegraph, and telephone administration, were actually attempted as a desperate but dubious means of securing relief. Resort to strikes and the practice of "sabotage" emanated chiefly, it is true, from certain communist nuclei that have sprung up among the petty public employees at Paris; but at that they were merely extreme symptoms of the *malaise* that prevailed throughout the *milieu des fonctionnaires*.

A few simple statistical observations will suffice to corroborate in cold figures the human suffering behind these insistent complaints. By 1919 the cost-of-living index in France, taking 1914 as the base, had reached 240; but a special government commission, appointed after considerable delay to revise salaries in the civil service, was willing to recommend that they be merely doubled, with a minimum of five francs a day for all, which gave partial satisfaction to employees at the bottom of the scale, but left those in the middle and higher ranks with only absurd increases. As the cost of living mounted

<sup>9</sup> *L'Europe nouvelle* devoted its entire issue of March 26, 1927, to "*La Crise des Cadres de la Nation*." In this may be found statistical data on the suffering both of public servants and of administrative efficiency since the war.

<sup>10</sup> The writer attended several of these meetings, at one of which dire threats were hurled at "Poincaré and the banker clique who now rule France."



steadily during the period while the *Bloc National* was in control, the embittered *fonctionnaires* carried on a militant campaign before Parliament and the cabinet for a thoroughgoing "revalorization" of their salaries. But the Poincaré government, interested more in the Ruhr and Morocco and Syria than in social justice, followed a temporizing policy. New investigations were repeatedly promised, but it was not until October, 1924—well after the May elections had brought in M. Herriot—that any genuine inquiry was undertaken. Another long year passed before relief came, and a niggardly relief it proved to be: salaries for most, but not all, categories of civil servants were to be raised merely 25 to 30 per cent above the 1919 levels, whereas the cost of living had since then more than doubled. Stating the matter more generally, prices had quintupled since 1914, but the remuneration of state employees had barely tripled.

The salary crisis came to a head in the summer of 1926 with the precipitate drop of French exchange to fifty francs to the dollar. If this decline had not been stopped and tentative stabilization at twenty-five francs to the dollar achieved by the new *Union Nationale* cabinet, the resentment of the *fonctionnaires* might have assumed violent form; for without some drastic "sliding scale" policy on the part of the government, its administrative staffs could hardly have eked out any sort of living. But stabilization alone could not bring adequate relief. For with the retail price level at 600, the salary scale in the public service reached only 300 for the middle and higher ranks and around 500 for some, but not all, of the subordinate classes. As a stop-gap, a law was hurriedly passed in August, 1926, which granted a 12 per cent supplementary indemnity to the subordinate employees, and made general the "coefficient" of three over the 1914 scale for the upper-grade officials. Meanwhile, delegations from the *Fédération des Fonctionnaires*, representing over 200,000 members, besieged the ministry of finance with insistent demands for further relief. Once more a special commission was appointed, but the government categorically announced in January, 1927, that 300,000,000 francs (\$12,000,000) represented the maximum credit that would be

available for salary revision. Nevertheless, this commission, strongly influenced by the straightforward argumentation of delegates representing the great mass of civil servants, undertook a comprehensive reclassification of salary schedules calling for an aggregate additional expenditure of a billion and a quarter francs (\$50,000,000). This classification, which the government has provisionally accepted, reduces from 483 to 42 the number of different salary schedules—a commendable effort in the direction of similar payment for similar work, regardless of departmental barriers.<sup>11</sup> But it does not provide for anything like a complete revaluation of salaries. The new rates of pay are to range from 8,000 to 80,000 francs, or, in American terms, from a little over \$300 to not quite \$3,500. Nor is the cost of living appreciably lower to-day in France than in the United States. For the upper crest of officialdom, in particular, the purchasing power of these salaries is but slightly more than half what it was before the war. A highly trained state engineer, after years of service, may hope for a maximum salary, not counting small allowances for dependents, amounting to only 50,000 francs; a distinguished professor at the Sorbonne, 54,000 francs; an inspector general in the ministry of finance, 60,000 francs. These examples are typical of what the present French cabinet claims is the most it can do for the administrative and educational élite of the nation—an élite upon whose shoulders rests the perpetuation of the greater part of French science and culture.

The precarious material situation of these men is aggravated by other consequences of monetary inflation and wartime profiteering. In pre-war days, it was the normal thing for most government officials to supplement their official salaries by family inheritances; they were, on a small scale, *rentiers*. To add to their present misfortunes, the post-war depreciation of the franc has virtually swept away this means of revenue, and

<sup>11</sup> While at the date of writing (February, 1928) this reclassification plan has not received its final detailed form, it will likely be accepted substantially as reported. Cf. the preliminary report of the Martin Commission, reproduced in *La Tribune du Fonctionnaire*, June 11, 1927.

they are thrown back almost entirely upon their meagre salaries. In the meantime, the living standards for the industrial and professional classes are now appreciably higher than they were before the war. Hence, by comparison the *fonctionnaire* views his plight as worse than it actually is. The result is to breed a class of "mean" petty officials, with an exaggerated sense of grievance, eager to snatch at every *pourboire* that is indiscriminately proffered by the passing tourist from overseas. Demoralization permeates the atmosphere of civil servant councils, and their leaders breathe forth imprecations upon a government which insists that its colonial, military, and debt obligations prevent the granting of further relief.

Now this is a situation which cannot help having a most depressing effect upon the morale of the public service. Young Frenchmen of to-day, seeing the sorry status of the servants of the Republic, are no longer turning toward government work. Instead, they are "colonizing upon the boulevards." A spirit of freedom and initiative, produced by the war, is taking hold of French youth. Life seems too short for long years of patient and prudent effort that at best will never bring more than a paltry compensation. Thus the call for candidates for government posts often does not yield as many applicants as there are vacancies to be filled. This is true even of the magistracy and the foreign service, where salaries are relatively good. In discussing the budget in the Chamber (November 27, 1926), M. Painlevé called attention to the fact that "many posts" were "deserted." Before the war, for example, in the ministry of labor 150 candidates ordinarily presented themselves at each competition for four or five vacant clerkships; to-day there are scarcely 30 candidates. In 1912, there were 28 young men from the *École Libre des Sciences Politiques* competing for four vacancies in the Council of State; in 1920, 30; while in 1926, only 13 competed, and the showing they made was so mediocre that only four were appointed, two vacancies being left unfilled.<sup>12</sup> The big importing and exporting houses offer flattering

<sup>12</sup> From data furnished the writer by the secretary-general of the Council of State.

opportunities for making fortunes in Africa or Indo-China and lure ambitious youths away from the state colonial service; so that the École Coloniale is experiencing the greatest difficulty in finding promising young men willing to submit to its rigorous course of training for distant posts that offer little pecuniary inducement. Two-thirds of the graduates of the École Polytechnique in Paris are going elsewhere than into government service. It has even been necessary for certain examination boards to lower the standards of competition in order to certify a sufficient number of men for posts that must be filled if essential government services are to be carried on. And in a number of departments, like that of education and fine arts, it has proved necessary to postpone the retirement age from sixty-five to seventy because of the scarcity of teaching material. Last summer an eminent professor in Paris stated to the writer that resignations of *lycée* teachers, unheard of before the war, are numerous nowadays. One of his former students, he went on to say—a young secondary school instructor with an *agrégé* (the highest pedagogical degree granted in the French educational system)—had recently accepted an attractive position with a large insurance company, although the young man knew absolutely nothing about the technical side of insurance. “You are an *agrégé*,” said the manager; “well that is enough; you can give us many new ideas!”

The failure of the government to carry out its promises, often repeated since 1913, to raise the scale of remuneration for secondary school teachers gave rise last June to a famous “examination strike” of over 200 of these mild-mannered and long-suffering members of the Parisian intelligentsia. Although their professional association is the most conservative of all the French teachers’ groups, even it lost all patience with the government and voted to refuse to serve on the examining boards for 8,000 *lycée* graduates who were candidates for admission to the University of Paris. The press made much of the incident, conservative papers, especially, being at a loss to understand why “professors,” of all persons, should resort to the horrid weapon of “direct action.” “Why not?” retorted their secretary.

"Since dignified methods of protest have availed us nothing, since many universities, even, have not yet paid us the modest fees due us for serving on the examining boards of a year ago, we have been forced to this dramatic means of showing our just resentment."<sup>13</sup> Though the ministry of education boasted of how it was able to find substitutes for "the strikers," the examination procedure seriously suffered, and public opinion became outspoken in its sympathy for the shabbily treated pedagogues, who, partially as a result of the incident, have since received some relief.

Speaking broadly, however, it is the abnormal exodus from the public service that is causing the greatest alarm among those who appreciate the importance of manning the state services with highly trained and experienced officials. As never before in the history of the French nation, state engineers, technical experts in public finance, trained jurists, and other officials are emigrating toward banking, industry, and the legal profession. In the latter circles, the attraction is a scale of remuneration often ten times as high as the government will pay. No longer can the state expect to keep up the tradition of men like Talleyrand and Jusserand, who served on for long years despite the changes of the political weather vane. For it has become exceedingly difficult to keep high officials in the government service longer than three or four years.

The following striking examples will suffice to show the rapid turnover since the war. On the Council of State four of the staff resigned in 1918-20, and seventeen in 1921-23; the directorship of the hydro-electric service, a highly technical and important post in the ministry of public works, changed hands five times in eight years; the headship of the "distribution of funds" in M. Poincaré's own ministry has passed through four different hands since 1919.<sup>14</sup> An equally high turnover has

<sup>13</sup> Substance of a conversation with M. Beltette, secretary of the *Syndicat national des Professeurs de Lycée*, Aug. 11, 1927.

<sup>14</sup> This data was obtained in part directly from personnel chiefs in the ministerial departments concerned, in part from L. Marlio, "L'Exode des Hauts Fonctionnaires," in *La Revue des deux Mondes*, Sept. 15, 1927.

marked the direction of French secondary education, where, certainly, continuity of supervision is desirable. While this drift of governmental personnel toward business is asserted by many thoughtful Frenchmen to be advantageous from the point of view of facilitating the adaptation of business to the objectives of government policy, no one argues that its effects upon the efficiency of state services are anything but harmful. Moreover, the full measure of the injury will hardly be felt until the pre-war generation of civil servants has completely disappeared from the scene.

In the meantime, a new type of public employee, without the old cultural background, is emerging. From being predominantly *bourgeois* in its personnel, the army of civil servants may before long be recruited as much from *le peuple* as from the middle classes. This, urge socialist and communist leaders, is excellent, for it will at last give the public service a really democratic character. Doubtless this view may in theory be easily sustained; but until the French system of educational scholarships can be sufficiently extended to make educational opportunity actually democratic, one wonders whether the nation will not suffer from the transitional deterioration of its administrative personnel.<sup>15</sup> Certainly the entry since the war of thousands of crippled war veterans into the public service, without much regard to their individual qualifications—a few of them, as I was told upon good authority, not even knowing how to read—only aggravates the existing demoralization of the rank and file of the *fonctionnaires*.<sup>16</sup>

According to the social criteria of to-day, there seems to be no longer any unusual honor attached to service to the French state. Its prestige value has been undermined by inexorable economic and psychological forces beyond its control. To-day, one hears, the *marchand de beurre* is “decorated” as often as the

<sup>15</sup> Approximately one-eighth of the students in the secondary schools hold state scholarships granted on a competitive basis.

<sup>16</sup> Various laws passed since the war reserve certain categories of minor and middle-grade posts to war veterans who are disabled or have served as volunteers.

public servant who had for many years given his talents to the good of the state. It is money, so runs the plaint, that determines the social value of everyone these days. The old moral considerations of "public welfare," once so potent in France, now have to enter into fierce competition with the material considerations of a post-war "industrialization" of values.

After this gloomy portrayal, the reader will doubtless wonder whether there are any signs of regeneration in the French public service. What of the prospects for the future? Is there a way out of the impasse? To these queries no definite answer can as yet be given. But at the risk of over-stating the possibilities, it may be said that France seems to be awakening to the necessity of putting its administrative house in order. To be sure, the public at large remains discouragingly indifferent to the problem. One notes, however, certain significant tendencies in the direction of belated justice to the civil servant, and, more important still, toward administrative reorganization; although nearly all of these developments face both economic and temperamental obstacles that it will take long to overcome.

First of all, as was pointed out above, the government is now giving serious attention to salary standardization and readjustment. The scale now being put into operation ranges from about 8,000 to 80,000 francs, without counting the various special bonuses and allowances to which public officials are entitled. Whereas only 1,358 million francs were expended for salaries in 1914, nearly 8,000 millions were voted in the budget for 1927; and the per capita remuneration for government work has risen from 2,200 to over 11,000 francs during this period.<sup>17</sup> Likewise, retirement pensions are in process of being brought up to something like their pre-war purchasing power, although it was then, of course, decidedly modest.

In these matters, however, no French government can go as far as it should because of the hard fact that over fifty per cent of its budget must still be devoted to debt charges (disregarding

<sup>17</sup> *Rapport général* of M. Henri Chéron on the 1928 budget as summarized in *La Tribune du Fonctionnaire*, Jan. 7, 1928.

the \$4,000,000,000 owed to the United States), and the additional fact that seventeen per cent is taken for military purposes. Out of every 100 francs paid in by the taxpayer in 1926, 54 went for debt charges, 17 for military upkeep, and only 5 for public education. So long as the nations are not willing to organize the world-community for coöperative defense, France feels, rightly or wrongly, that she cannot reduce her armaments with any greater rapidity than at present. In this regard, it is not generally realized in America that France is the only Great Power (except Germany) now spending less money for military purposes than in 1914. Her army, navy, and air services cost in 1927 less than \$275,000,000 a year; the United States and Great Britain each spent between \$500,000,000 and \$600,000,000, a sum which, if prospective naval programs are carried out, seems destined to increase, although the French military program contemplates a gradual contraction.

Whatever attitude, then, this country may ultimately come to on the French war debt question, existing budgetary realities would seem to preclude anything like a complete revaluation of salaries and pensions for the French civil service. With over twenty per cent of the national income already taken by the state in taxes (as against eleven per cent in the United States), no French cabinet seems willing to face the alternative of still higher tax rates. It is likely that the gradual decline in the high business salaries and pensions now setting in will react to the relative advantage of the government in its effort to recruit men for its administrative staffs. But, fiscal difficulties aside, it is doubtful whether the French shopkeeper and peasant (who hold the key to political action), so accustomed to believing "all ills come from the *fontionnaire*," and so saturated with the idea of social equality, could be brought to accept a scale of remuneration for government employees that would compare favorably with the English or the German.

This sociological quality of French life leads one to ask what, if anything, is being done toward spreading out government jobs less thinly. Keenly appreciative of the fiscal importance of retrenchment, M. Poincaré has dared abolish by decree 106 sub-



prefectures, 70 departmental secretaries-general, and certain other local dignitaries.<sup>18</sup> Minor economies in certain of the central departments, such as, for instance, suspending the publication of annual reports and yearbooks, are effecting a slight reduction of personnel, though sometimes at the expense of proper public reporting. But these reforms can be only fragmentary, not alone because of the vigorous opposition of powerful staff organizations and of war veterans' associations, but also because of an understandable, if unwise, local resentment at seeing small centers deprived of their "official" importance. Like American congressmen, French deputies think most easily in provincial terms. And there is another factor. The reduction in the number of government employees cannot become drastic until the dismissed *fonctionnaire* can be absorbed by the labor market outside. He must be retained either until death or until he reaches a reasonable retirement age. Hence, the shrinking of the public pay roll can, by and large, take place only as rapidly as the slow-moving hand of time permits.

After all, it is not so much a decrease in the size of the civil service as it is a more effective utilization of the existing personnel that is desirable. "Everywhere," recently wrote Mr. Sisley Huddleston, "there is misemployment. In the postoffices you will see long files of waiting patient members of the public before one *guichet* while the clerks behind six other *guichets* have apparently nothing to do except to fill up forms. To have a parcel weighed or a letter registered is an endless operation. On the state railways the repeated *contrôle* is amazing."<sup>19</sup> While this characterization of French bureaucratic practices, which are by no means confined to government offices, but are to be found in theatres and department stores as well, contains a certain element of exaggeration, it remains a substantially valid appraisal. But to bring about a better employment of personnel, two things are necessary: on the one hand, a fusion of certain overlapping services and an improved coördination of other distinct but closely related departments, and on the other, an

<sup>18</sup> Decree of Sept. 10, 1926.

<sup>19</sup> S. Huddleston, *France* (London, 1926), p. 587.

improved technique of what is known in America as "personnel management." Of administrative reorganization there has been much talk in recent years, as well as before the war, with as yet little actual accomplishment. M. Herriot's creation of a permanent secretariat for the Council of Ministers, although emasculated by M. Poincaré for reasons of doubtful economy, bids fair eventually to become a highly useful liaison agency in the central administration at Paris. Under the leadership of M. Louis Marin (at present minister of pensions), several interesting projects for fusing ministries so as to reduce the number from thirteen to eight<sup>20</sup> or nine have been worked out.<sup>20</sup> In most of these proposals the ministries of war and the marine would become a single ministry of defense; the existing ministries of the interior and of justice, together with certain services relating to public hygiene and assistance, might be co-ordinated into a single department of general administration, and the ministries of commerce, agriculture, and labor would be fused into a single department of national economy. It is generally agreed that the several services of both tax collection and educational administration need to be unified so as to reduce overhead expense and accelerate the execution of policy. More radical reformers, like M. Henri Chardon, propose the abolition of the prefect as a no longer useful *political* representative of the central government in the provinces; his duties, they argue—and rightly so, it seems to the disinterested observer—can better be performed by technical inspectors and supervisors sent out by those administrative departments that have to do with police, road building, public health, education, and economic regulation. Recent legislation, moreover, widens the competence of local legislative councils and gives permission to two or more communes to set up joint administrative *syndicats* (boards or commissions), or enter into *ententes*, for the *ad hoc* handling of

<sup>20</sup> Cf., especially, for careful discussions of the current aspects of administrative reform, H. Puget, "Un Programme de Réformes et d'Economies," *Revue des Sciences politiques*, April-June, 1924, and P. Flandin, "La Réforme administrative," *Revue de Paris*, June 1, 1927.

common problems.<sup>21</sup> This presages a sort of functional regionalism that may yet steer France safely between the Scylla of centralization and the Charybdis of territorial regionalism.

Still more suggestive is the campaign now being waged in France for what is called the "industrialization" of the public services—at any rate, of those which, like the postal, telegraph, and telephone administration and the ministry of public works, lend themselves to fiscal autonomy and the stimulus of economic profit. The industrializationists received their original inspiration from a famous industrial engineer, M. Henri Fayol, who in 1921 published a widely read proposal entitled *L'Incapacité de l'Etat: les P.T.T.* Since then, the Federation of Postal Employees has interested itself in Fayol's ideas, and it finally induced Parliament in 1923 to grant budgetary autonomy to the P.T.T. The able leaders of the Postal Federation have developed a comprehensive project for applying to the French mail and communication services "business principles" whereby any excess of receipts over disbursements would be directly devoted to ways and means of improving the service, which now ranks as low as seventeenth in technical efficiency among the postal services of the world. In proposals like this, the organization of an "economic" public service would be modeled after that of *la grande industrie*, with a board of directors including representatives of the technical and operating personnel, but with ultimate control left in the hands of Parliament. Although employee groups do not go so far as to demand a share in the "profits," they naturally insist upon a salary scale that will enable them to live comfortably in their respective *milieus*. Judging from M. Poincaré's attempt last summer (defeated, incidentally, by the pressure of socialists and *fonctionnaires*) to turn the government match monopoly over to a private Swedish-American concern, in return for a definite guaranteed rate of return, the present government seems to favor "concessions" to private companies rather than the so-called industrialization from within; and in any case there are many public services,

<sup>21</sup> Decree of Nov. 5, 1926.

like education, that defy the latter kind of surgical treatment. This matter is a bone of contention between the conservative and radical points of view which may come to the front in the parliamentary elections of 1928.

Of the application of personnel management to the public service, certain promising, though as yet isolated, beginnings may be noted.<sup>22</sup> A little of this decidedly American influence has at least penetrated the periphery of some of the government departments. Experiments for the better selection of telephone operators by the use of psycho-technical tests have been conducted; in the navy, similar experiments were recently initiated at Toulon with a view to securing from radio operators a higher level of individual efficiency. To stimulate zeal and initiative on the part of its employees, the ministry of finance is trying the use of "bonuses" in the division responsible for the collection of direct taxes. Similar experiments are going on in the statistical division of the ministry of labor, the mail service, and a number of other departments. This sort of stimulant was abandoned after a year's trial in the postoffice, and is generally criticized by most staff associations on the ground of favoritism in its allocation, as well as by "authoritarian" politicians of the old school who believe strictly in budgetary rigidity. Furthermore, the quality of many kinds of public work can hardly be quantitatively measured. Nevertheless, the impetus behind experimentation of any sort is an encouraging sign.

Of like promise are the staff schools for customs inspectors, postal clerks, and clerical employees (in the ministry of finance) that were recently set up with a view to offsetting the innate tendency of the bureaucrat to stagnate. In this regard, credit should be given to the professional organizations of public employees, for they have constantly agitated for continuation training for their members after entry into the service; and some of the staff groups have actually started schools of their

<sup>22</sup> The author has in preparation a series of monographs analyzing the technical aspects (recruitment, promotion, discipline, salary standardization, etc.) of French personnel policy. *Man. Ed.*

own against tremendous economic odds. Any one who has studied the remarkable achievements of big industrial plants in this direction knows full well how much room for this kind of exploration there is in the public service, not merely of France, but of every country.

In the end, the chief immediate hope that France's "bureaucratic armament" will become modernized probably lies rather with the civil servants themselves than with the politicians. The former have developed a professional *esprit de corps* that is doing more than any other element in French life to instill new methods in government work—things like the use of less antiquated filing devices, simplification in the handling of correspondence, the introduction of cost accounting and of calculating machines, and so on. Until there comes a thoroughgoing constitutional reform which will permit a minister to stay in office long enough to carry through a well-conceived program of administrative reorganization, the deeply-rooted vices of bureaucracy can only be mitigated, but not completely eradicated. Such a reform, unhappily, is too closely related to "high politics" to take place very soon. Meanwhile, unless unrelieved grievances drive the organized civil servants to communism, (most of them are now closely affiliated with the moderate *Confédération générale du Travail*, but there is a growing communist minority), the intelligent, courageous, sometimes impatient, officers of their staff associations can and will do much to free French administration from the inertia of the past. It is these hard-working, poorly-paid men and women who will sooner or later force Parliament to stop sending spies into government offices in the hope of "getting something on the Administration"; it is they who are now leading the government to adopt a personnel code that will eventually protect civil servants from arbitrary and unjust treatment, and will handle the intricate problems of promotion and discipline in a way that should incite creativeness and replace the prevalent obliviousness to the

<sup>23</sup> The growing use of advisory functionalism in French administration is most suggestive. It will be treated in a second article in a later issue of the *Review*.

public's convenience with a genuine desire to serve it. It is they, finally, who are bringing about the close and increasingly fruitful collaboration between technicians inside and representatives of economic and social groups outside, such as has culminated in the National Economic Council, the Superior Council of Education, and the Superior Council of the P.T.T.<sup>23</sup> These are developments in vocational representation that are helping to "break the backs of administrative policies over the heads of the public," and from such experiments certain valuable lessons may be drawn for the handling of American national problems. For our own democracy has yet to learn how to bring lobbying out into the open and to dispel its lingering distrust of the expert in public affairs.

So far as France is concerned, one need not expect the changes herein sketched to produce an American brand of efficiency. That would be to leave out of account both the hard economic limitations that France has inherited from the war and the peculiar temperament of her people. In the Chamber of Deputies the typical question put to ministers has little to do with administrative efficiency, but is concerned rather with personal or class or political interests. As M. Robert de Jouvenel has so brilliantly put it, France is still a *république des camarades* in which the desire to please or flatter a friend counts for more in the selection and advancement of important officials than does the rigorous application of "service ratings" on a merit basis. One remembers how dramatically the government of M. Herriot fell in 1925 because it filled a vacancy in the faculty of law in Paris by appointing one of the personal *attachés* of a member of the cabinet instead of the properly presented nominee of the Faculty itself. French temperament finds its chief means of expression in the clashing of ideas and opinions. The Frenchman, M. André Siegfried once remarked to the writer, feels cramped if he remains longer than six months in Switzerland, where "material things run too smoothly." He is interested mainly in the cultivation of his individual faculties and in the warring of rival political factions and opinions. That is why he has so patiently tolerated his slow-moving, some-

what antiquated, public administration. This administration may, however, be on the road toward a renovation upon twentieth century principles. In the opinion of the writer, America can contribute most helpfully in the fitful, painful process that this entails, by genuinely coöperating in the world movement for international security, and, not least, by rebuilding her debt policy so that it will no longer bring upon us, justifiably or not, the opprobrious epithet "Uncle Shylock."

## FUNCTIONAL REPRESENTATION IN THE INTERNATIONAL LABOR ORGANIZATION

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### I

A *bloc* system has superimposed itself upon national legislatures. Although their members are elected on a definite territorial basis, they associate themselves together in response to interests in their constituencies which have little relation to their electoral districts. Thus, in the United States, a foreign word has come into use to designate the organized agricultural interests which constitute the farm *bloc*.

More or less definite aggregations of this kind have been formed throughout parliamentary history. Some of these have been the result of particular manufacturing or commercial interests; other groupings have followed religious or social-class lines of cleavage; nevertheless, the basis of representation, in the popularly elected chambers, has remained territorial. Since 1919, however, an international assembly has been built up on a new political pattern. This is the Conference of the International Labor Organization, which convened for its tenth session at Geneva, in May, 1927, and in the following October completed the eighth year of its history. Notwithstanding the fact that structurally this body has a national basis, in that the delegates are sent by different member states, the conferences derive their character and mode of operation, not so much from the member states as from the three component groups in which national differences are more or less subordinate. These groups represent, respectively, the governments, the employers, and the workers of the several countries.

The International Labor Organization was called into being by Part XIII of the Versailles treaty. Like the League of Nations, with which it is associated, it owes its existence to the attempt to make peace more secure by providing a way for the adjustment of economic interests which, left to oppose one



another, might constitute causes of war. These interests, although not confined to one nation, seek protection and support from the governments of the several states. Political middlemen are consequently set to work in a roundabout way to make treaties, to build tariff walls, and to establish credits for the benefit of the nationals associated together in some economic interest. These political intermediaries are often found to be slower than the interests will permit, and often they are forced to introduce factors foreign to the matter in hand, thereby imperiling the delicate balance they seek to establish. Partly for this reason, the big business interests in different countries seek direct conferences and combinations which are international in character. Instances in point are the association of groups of American and foreign companies in large-scale oil operations in Iraq organized as the Turkish Petroleum Company in 1925, and the establishment of the international steel pact in 1926 by interests in Germany, France, Belgium, and Luxemburg.

At the same time that international manufacturing and credit associations were being formed, labor groups, apprehensive of what was going on, also essayed international association. None of these has achieved a high degree of solidarity or permanency as yet, chiefly because no international business combination and no federation of labor has been able to comprehend in its practice all the complexities of a world made up of national units of different races, at different stages of economic development, all under a necessity, greater than ever before, of exchanging with one another raw materials and manufactured products.

The structure of the International Labor Organization offers unusual advantages for the achievement of international co-operation, advantages which may be seized for ends even more far-reaching than the Organization's immediate program. This program is the elimination of the competition which results from the fact that national and economic frontiers do not coincide. Since different legal requirements govern the conditions of work in countries which trade with one another, it has long been contended by the employers in those countries where the legal restrictions are many that they pay higher labor

costs than their competitors in countries where the corresponding restrictions are few and unimportant. The workers object that the difference in working conditions makes competitors of workers in such a way as further to depress the standard of living of both competing groups. Hence the attempt to make uniform standards of employment by this new process of international legislation, in order that the standards of living of the workers may be protected and manufacturing costs may be evened up in so far as inequalities are due to differences in the legal requirements regarding employment.

The object of the annual conferences of the International Labor Organization is the adoption of draft conventions which the delegates take back to the member countries to be ratified by the national law-making bodies and enacted into national law. To April, 1927, a total of 217 such ratifications had been registered with the secretary-general of the League of Nations. At the same time, thirty-eight other conventions had been authorized by the competent authorities of the countries, but not yet registered.<sup>1</sup> Still others had been recommended but not approved, or had been given delayed or conditional application. Some of the more important of these conventions deal with the application of the principle of the eight-hour day and the 48-hour week, the protection of women and children, unemployment insurance for shipwrecked sailors, the rights of association of agricultural workers, and equality of treatment of national and foreign workers under the workmen's compensation laws of the various countries. The countries now members include all important ones in the world except Turkey, Egypt, Mexico, Russia, and the United States.

## II

The subject with which the present study is concerned is the method by which the separate functional groups in the conference work, as this international law-making process is carried on, and the results they have achieved.

<sup>1</sup> *Monthly Summary of the International Labor Organization*, April, 1927, No. 4, p. 21.

"Never since the days of P ntecost has there been an assembly like this, and until tongues of fire descend on us and enable each of us to speak in a language which will be understood by his fellows, it will always be open for someone to say that he did not understand what was being done." These were the words of Mr. Cuthbert Laws, the employers' delegate from Great Britain in the session on maritime affairs in June, 1926. They were spoken, however, in a speech, the purport of which was that, in spite of the differences of language, race, position, and nationality, essential understanding is not impossible. Obviously the difficulties are many. But by means of the translation of all speeches into one or the other of the two official languages, French and English, understanding is secured; and the less obvious barriers of social tradition are somehow overcome.

The government group, made up of two representatives from each country, is twice as large as either of the others,<sup>2</sup> represented as the latter are in each country's delegation by only one employer and one worker, though these may each be accompanied by expert advisers who may speak and, on occasion, even vote as deputy for the delegate. The justification for the government majority is that since it becomes the obligation of the governments, according to the scheme, to incorporate in their national legislation the conventions recommended in the draft conventions they require a controlling hand. The employers' and

<sup>2</sup> Up to the present time, indeed, the government group has had an even larger proportion than it is assigned in the constitution, because some member states have sent incomplete delegations, consisting of government representatives only in a number of instances. These have usually been the smaller and more distant countries, where the expense of a full delegation has been a deterring consideration and where some resident diplomatic representative of the country has been named to serve. On the other hand, a number of countries now maintain a permanent secretariat at Geneva to attend to their interests in the International Labor Organization. The numbers actually present in the three groups in the conferences of 1925 and 1926 were as follows:

Session	No. of countries	Government	Employers	Workers
7	46	80	32	32
8	39	71	29	31
9	38	70	29	30

workers' representatives are appointed for each conference by their governments in agreement with "the most representative" employers' and workers' organizations, respectively, in their countries. The three groups each elect a chairman, vice-chairman, and secretary, and establish an office during the session of the conference. They caucus on all important issues, and nominate their representatives on the special committees which handle the work of the conferences and prepare it for the action of the whole. In the committees, unlike the conference as a whole, the three groups are equally represented, on the basis of 1-1-1, instead of 2-1-1, so that in the committee procedure, the governments have no guarantee that a combination of employers and workers will not constitute a successful opposition. On the Governing Body, the executive of the Organization, the government representation is again twice that of the other groups, the government members filling just half of the twenty-four places.

### III

The most definite test of the solidarity of the functional groups is the degree of coherence their members show in the record votes. These votes may be examined to ascertain whether they show a distinct ranging of separate government, employers', and workers' interests behind substantial majorities of each, or whether the votes scatter. The significance of scattering might be either that there are no group interests which divide on the issues with which the conferences have dealt, or that their autonomy has been interfered with by extraneous political influences.

A measure of group solidarity is, in fact, exhibited in all three cases, but with a marked difference in the degree in which it has been achieved by the three groups. For instance, the undivided votes of the seventh, eighth, and ninth conferences give evidence that the tendency of the workers to vote together was decidedly stronger than that of the other groups. They voted

\* The data presented are those of "record" votes only and do not include the "show of hands" votes, even when the official records reveal the numerical distribution of these votes.

without a single break in their ranks on thirty-two of the thirty-six votes<sup>3</sup>; whereas the employers, who voted as a unit only nineteen times, were divided nearly as often (seventeen times), and the government delegates were nearly twice as often divided as they were of one mind, i.e., twenty-three to thirteen (see Table I).

TABLE I  
DIVIDED AND UNDIVIDED VOTES IN THE 7TH, 8TH, AND 9TH CONFERENCES

Session	Record votes taken	Government		Employers		Workers	
		divided	undivided	divided	undivided	divided	undivided
Seventh	19	11	8	9	10	2	17
Eighth	4	3	1	2	2	1	3
Ninth	13	9	4	6	7	1	12
Total	36	23	13	17	19	4	32

Not only was the workers' vote split less often than the votes of the other groups, but the minorities, in the cases of divided votes, were always negligible ones. To illustrate by the voting in the ninth conference: there was only one instance of a divided workers' vote, and in this case the minority numbered three. The employers had six minorities, all small, on the votes of the same conference. The largest of these, six votes, was the only case in which the minority was as much as a third of that part of the group which voted on the other side of the question. The government voting, on the other hand, gave evidence of opinion which was frequently divided. There were nine divided votes, in four of which the minorities were more than a quarter of the opposing majorities. In one case, a minority of twenty votes was less than the majority by a single vote.

It may be assumed that the government stakes in the issues are different from those of the other groups. Naturally, the position which a government representative must take is almost of necessity determined first of all by political expediency, either that of the domestic situation or that of foreign relations. This

may require a swing in one direction at one time and in the opposite one at another. Furthermore, there are few philosophic considerations which guide all governments *qua* governments. This is certainly true of an assemblage in which sit together the representatives of fascist Italy and republican Germany, Australia, a member of a great "commonwealth of nations," and Switzerland, without such associations. On the other hand, all recognize a comity which requires each to abstain from any act that might be interpreted as criticism of the internal arrangements of another state—an obligation not binding, of course, on the employers' and workers' groups. Such a consideration was evidently sufficiently strong in 1924 to prevent the government representatives who were members of the British Labor party from recording themselves as rejecting the credentials of the workers' representative from Italy when the fascist government appointed Mr. Rossoni, though as trade unionists and as members of their political party they were doubtless as opposed to his sitting as were any one of the workers' representatives who voted against him.

In signing the treaty of peace the governments became responsible for the existence of the International Labor Organization, and good faith requires them to make its operation possible. If few conventions were adopted by the conferences or none drafted which the states would ratify, the very existence of the Organization would be threatened. It is especially incumbent, then, upon the government representatives to see that its operation is not blocked and to use their influence to continue it as a going concern. It would be difficult to assign a particular vote to this general obligation. But undoubtedly it is felt by the individual government delegates, as their speeches clearly show. Other things being equal, they will vote so that the body of international legislation will accumulate. Possibly this general obligation constitutes the reason why (contrary to the impression of so many workers), the government delegates have more often voted so that their majority coincided with that of the workers than with that of the employers. In the combined record votes of the first nine conferences, the govern-

ment majority was on the same side with that of the workers forty-seven times (exclusive of the votes when the majorities of the three groups coincided) and only sixteen times with that of the employers (see Table II). It is maintained that this record reflects the rôle of the governments in making their necessary and appropriate contribution for carrying out the original purpose of the Organization, rather than the award of an arbitrator between parties in dispute.

TABLE II  
LOCATION OF THE GOVERNMENT MAJORITY ON ALL RECORD VOTES

Session	Number of votes taken				
	Total	Government with Workers	Government with Employers	All Three Together	Government against Others
First	25	6	6	13	—
Second	16	6	—	9	1
Third	23	6	2	15	—
Fourth	3	1	—	2	—
Fifth	5	—	3	1	1
Sixth	7	4	2	1	—
Seventh	19	12	1	6	—
Eighth	4	3	1	—	—
Ninth	13	9	1	2	1
Total	115	47	16	49	3

When the entire rôle of the governments is studied, the comparative lack of coherence of this group remains conspicuous. Of the three, it has had throughout the entire history of the conferences the greatest difficulty in working smoothly. It has been pointed out that "notwithstanding its numerical superiority over the two others, it sometimes finds difficulty in drawing up the list of members of the group for the committees."<sup>4</sup>

The points of view from which the employers from various countries, on the other hand, have approached the problems

<sup>4</sup> "The Eighth Session of the International Labor Conference," *International Labor Review*, Vol. XIV, No. 2 (August, 1926), p. 188.

of international standards for working conditions have been sufficiently alike to permit a substantial degree of accord. As employers, they have looked at proposed regulations in the light of what they add to manufacturing costs or the possible effect upon markets. For instance, in the discussion of the convention for the elimination of night-work in bakeries, it was objected that the impossibility of delivering fresh loaves of bread in the morning would mean a considerable decrease in the amount sold. In the words of the director: ". . . . It is their endeavor to lessen the burdens on industry, and labor legislation sometimes seems to them to increase these burdens. Frequently they have considered that it was their duty to act as a check, if not as actually opposed to the development of international labor legislation."<sup>5</sup> Usually where the proposed convention suggested a change in the *status quo*, the employers in the countries affected have massed in solid formation against it. They have been willing to make a general regulation only when the prevailing practice was already fairly general. This was true of the discussions of the special session on maritime affairs held in the summer of 1926. The employers argued that the Labor Office, in preparing drafts for the conference, should aim merely to crystallize or codify the regulations which were already a part of prevailing practice, rather than attempt the laying down of new rules.

Where standards of work and standards of living present wide differences, the interests of employers in different countries may be quite differently affected by the adoption of a convention. This was brought out in a discussion in the seventh conference in 1925 by Sir Thomas Smith, employers' representative from India, in a reference to Japan's failure to ratify the Washington Hours Convention. He contended that Japanese manufacturers had a material advantage over those in upper India, where hours had been voluntarily reduced.

" . . . . Japanese manufactures," he said, "can be, and are being, dumped in Bombay at prices with which the Bombay

<sup>5</sup> International Labor Conference, Eighth Session, *Report of the Director* (1926), p. 192.



manufacturers cannot compete. It comes to this: Japan takes her cotton from India to Japan, manufactures it, sends it back, and is able to undersell Bombay, which has cotton at its doors. The cotton industry has been and is still going through a period of grave stress, and it cannot regard with equanimity the unfair advantage taken by Japan. It therefore calls upon Japan to ratify the Hours Convention, and it asks this conference to ensure by its moral support that Japan shall fulfill the undertaking which she entered into at Washington. . . . Unless Japan ratifies, I can foresee retaliation by India in other directions which I need not speak of here. But I equally foresee a more deplorable thing, and that is that India will have nothing more to do with ratification. . . ."<sup>6</sup>

The point of this contention is not lost, even if the Japanese reply made to Sir Thomas Smith's speech held more of the truth. This was to the effect that it was "unfounded to assert that Japan is taking advantage of inferior working conditions in commercial competition with India," since India deals with coarse yarns and Japan with fine, but that both Japan and India suffered from the development of cotton manufacture in China. Therefore both countries would gain by the adoption of the hours convention under discussion. This instance is not the only one in which employers in countries of unequal industrial development have been unable to see common advantage in uniform standards of employment where some change in existing practice was necessary to secure them, but there has seldom been lacking among the employers some voice to proclaim that the alternative of competition on the basis of different standards is ultimately ruinous.

The factors that have threatened the autonomy of the workers' group, with a single exception, have come from considerations unrelated to the subject-matter of the conventions and recommendations. One of these issues has been the repeated refusal of the workers' group to acknowledge the fascist appointee, Edmondo Rossoni, president of the Confederation of

<sup>6</sup> International Labor Conference, Seventh Session, Vol. I, p. 108.

Fascist Trades Union Corporations, as a representative of the Italian workers. Ever since 1923 they have contested Rossoni's credentials and have voted to a man against seating him. Each time, however, a combination of the government and employers' representatives has admitted him as a member of the conference. Defeated at this point, the workers have made his presence at the conference meaningless by refusing to name him for any one of the committees through the work of which the conference is done, thereby preserving the autonomy of their group from what they have regarded as political interference from Rome.

The counter-move of the employers was an effort to change the standing orders of the conference. These provided that the members of the various committees should be determined from lists submitted by the three groups, and that no change should be made in the composition of committees except by the conference itself in the course of a full sitting. At the seventh session, the employers supported an amendment which proposed that the lists submitted by the three groups should always be two less than there were places to allot on the particular committee, and that the selections committee should choose the two remaining members from the group concerned. This would have been a real inroad upon the autonomy of the group, and would have made possible a place for Rossoni against the wish of the workers' group. It remained for Sir Louis Kershaw to make a compromise suggestion which was approved by the special committee on standing orders and by the Governing Body and was adopted. It was to the effect that any delegate might take part in the work of a committee, attend its meetings, and have all the rights of a member except the right to vote.

The religious affiliations which have divided trade unions at home in the member countries have threatened to split the workers' group at Geneva. The first instance of this was in 1921, when three federations of trade unions with Roman Catholic membership asked to be considered together as the "most representative" body of workers in the Netherlands, and the one with which the government should consult in appointing the

workers' representative in the conference, instead of the Netherlands Federation of Trades Unions, the body with the largest single membership, and the one with which the government had advised up to that time. Although the combination of the Catholic federations was made for the purpose of securing substantial numbers and of urging their "most representative" character on this basis, there was evidently here a plea for some provision for minority representation. The matter was adjusted by an agreement to appoint the workers' representative at successive conferences alternatively from the Catholic and the non-Catholic groups, though this was not done without protest in the credentials commission. In 1924 a similar problem was presented by divergent workers' groups in Czechoslovakia.

The workers' group is not the only one in which importance is attached "to the representation of groups or schools of thought," though criticism on this account has perhaps been sharpest in the workers' group, where, it is alleged, it has amounted to the "dictatorship of the representatives of certain trade-union views and their habit of excluding those of a hostile or at least divergent school of thought."<sup>7</sup> When the subjects of proposed conventions have related to problems of workers employed in particular trades or industries, as in the case of seamen, the question of their adequate representation through the customary machinery of appointment has come up. In the ninth session it was proposed that the Permanent Court of International Justice be asked to decide whether, when special conferences were called to consider the standards of employment of workers in a particular industry, the requirement made in Section 389 of the Versailles treaty for consultation with the "most representative" organization of workers and employers in a country might not be taken to apply to the organization of work-people in the industry concerned. In this way, functional representation might be more complete than through the central bodies.

<sup>7</sup> "The Eighth Session of the International Labor Conference," *International Labor Review*, vol. 14, no. 2 (August, 1926), p. 187.

The conference of 1927 put into effect a new procedure for voting, designed to give more opportunity for drafting conventions which the member countries will be able to adopt promptly. It is now incorporated as Article 6 of the standing orders of the conference. Briefly, this is as follows. The Governing Body first places a question on the agenda of a forthcoming conference. The Office prepares a documentary report on the subject of the question, followed by a draft of a questionnaire on it. The conference discusses the question with a view to determining whether it is a suitable matter for a convention or recommendation. A two-thirds vote is necessary to place the question on the agenda for the next meeting. After the conference has decided on the form of the questionnaire, the Office revises it and sends it out to the governments within a month's time. The replies received from the governments furnish the basis of the report prepared four months before the next session of the conference. Thereupon, the conference deals with the question in the usual way. This plan will require some testing before it will be possible to say whether the provision for taking into account the situations and inclinations of the different governments will be the means of accelerating the discouragingly slow process by which the important industrial countries of the world have adopted the conventions and made them part of their national codes.

The history of the conferences abounds in instances in which members of the different groups have seized the opportunity of an international stage to focus attention upon affairs at home for the sake of forcing the hand of the government or for other effects that the publicity might have upon an issue. India has furnished a number of these. "May I ask the seamen of Europe," said Mr. Doud, workers' representative from India at the ninth session, "to keep their eyes upon Indian seamen and see that they are well paid and treated more like human beings and that their hours of work are regulated?" "All that we are attempting to do," said Mr. Lala Lajpat Rai, workers' representative from India at the eighth session, "is to throw the light of publicity upon conditions of life existing in those

countries where self-government does not prevail or where conditions of labor are not such as we would like them to be." At the eighth session, the seating of Sir Arthur Froom, employers' delegate from India, was contested on the ground that he was not an Indian. This protest came from associations of merchants and buyers whose members were Indians and from the Indian chambers of commerce of Calcutta and Rangoon. Together with the protest of insufficient representation from the Federation of German Trade Unions in Czechoslovakia, it brought before the conference considerations which had to do with the different national and racial elements in the countries, rather than with conflicts of economic interests.

#### IV

Any attempt to gauge the success of this experiment in functional representation must take into account the extraordinary difficulties under which it is being carried out. These include differences in language, race, and stages of industrial development, as well as the opposition of economic-class interests. In spite of these, a comparison of its progress with the long and slow process by which important legislation is often worked out in fairly homogeneous countries like England and the United States brings one to the conclusion that the small number of adoptions of the conventions of the conference is not yet a matter for discouragement. When presiding over the seventh conference, President Benes said: "The conference has incontestably become a school for the propagation of a wise, moderate, and at the same time profound, international spirit. . . . It is the spirit of international solidarity, which in spite of everything, is necessarily spread in this hall, and from this hall to the outside world." The correctness of this observation is borne out by the fact that in forty-nine of the one hundred and fifteen record votes of the first nine conferences the majorities of all three groups were ranged on the same side of the question (see Table II).

Further experience may definitely show that more substantial and more nearly permanent agreement can be reached by the

## PUBLIC ADMINISTRATION, 1927

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The following pages represent an experiment. They are devoted to an initial attempt to summarize the most important events in the field of public administration in the United States for a calendar year. A series of such summaries, if they could be made reasonably complete, would presumably be of substantial value, at least to the academic world; the present survey, incomplete and unsatisfactory from many points of view, may at least serve as a point of departure for later enlargements and improvements. I am indebted to many correspondents for assistance in gathering the materials on which it is based; and I acknowledge my gratitude to them, without implicating them in the result.

**Administrative Reorganization.** Although the movement for reorganization of public administration has slowed down, significant steps were taken in 1927. Two large-scale state reorganizations were effected, in California and Virginia, the latter following a careful survey by the National Institute of Public Administration.<sup>1</sup>

In California the bulk of the state work is consolidated in nine departments, the directors of which comprise the governor's council.<sup>2</sup> This is an interesting legal reconstruction of the governor's council inherited from the eighteenth century in Massachusetts, Maine, and New Hampshire. The department of finance (Chap. 251) is given general powers of supervision over all matters concerning financial and business policies of the state, including specifically authority to audit, to visit and inspect institutions, and with the governor to authorize expenditures in excess of appropriations. The state board of control replaces the state board of examiners, and now consists of the director of finance, the chief of the division of service and supply, and the state comptroller (Chap. 251). It approves all state contracts and receives notice of local bond issues. The department is of significance both as an agency of general control and as an agency to observe and report on the mounting indebtedness of local governments. The reorganization was not effected in a single statute (cf. Illinois,

<sup>1</sup> *Organization and Management of the State Government of Virginia* (Richmond, 1927); *County Government in Virginia* (Richmond, 1928).

<sup>2</sup> Session Laws of California, 1927, Ch. 105.

Pennsylvania, Massachusetts, etc.) but in a series of independent enactments, i.e., Chapters 49, 105, 128, 251, 252, 276, 440, 515, 580, 595. It is of interest to observe that the key appointments are made by the governor without the consent of the senate, and that the incumbents serve at the governor's pleasure.

A special session of the legislature was called by Governor Byrd to reorganize the Virginia state government.<sup>3</sup> The new plan provides for twelve departments, and in the governor's office for four divisions dealing respectively with the budget, records, military affairs, and grounds and buildings. Constitutional amendments are pending to complete the task of reorganization.

Several changes were introduced in the Pennsylvania administrative code.<sup>4</sup> The department of state and finance has been deflated to the traditional office of secretary of state, while budget duties have been transferred to the office of governor. The budget secretary, however, lacks power to prescribe uniform accounting procedure. A department of revenue will come into existence in 1928. The department of internal affairs, a constitutional office which Governor Pinchot desired to abolish, has been rehabilitated and enlarged.

Connecticut replaced its former state board of finance with a board of finance and control consisting of the governor, secretary of state, treasurer, comptroller, attorney general, tax commissioner, commissioner of finance and control (all *ex officio*), and three electors appointed by the governor and senate.<sup>5</sup> Opinion as to the proper form of the general agency of control seems as yet far from settled.

The reorganization of city government has proceeded along well established lines. The city manager plan was adopted or inaugurated in Oklahoma City, Indianapolis, Hamilton (Ohio), Rochester, and other smaller cities, totalling a net gain of twenty-six. Buffalo abandoned the commission plan in favor of the mayor-council form, and Auburn, New York, abandoned the manager plan for the mayor-council type. Campaigns for the adoption of the city manager plan are in progress in Seattle, Oakland, Toledo, Terre Haute, Kansas City (Kansas), Tulsa, Dallas, and other cities.

Highway departments were reorganized in Alabama,<sup>6</sup> Kansas,<sup>7</sup>

<sup>3</sup> Session Laws of Virginia, 1927, Ch. 33.

<sup>4</sup> Session Laws of Pennsylvania, 1927, p. 207.

<sup>5</sup> Session Laws of Connecticut, 1927, Ch. 297.

<sup>6</sup> Session Laws of Alabama, 1927, p. 348.

<sup>7</sup> Session Laws of Kansas, 1927, Ch. 255.

Iowa,<sup>8</sup> and Ohio.<sup>9</sup> A pension commission was created in California;<sup>10</sup> important pension reports were presented by Comptroller Charles W. Berry of New York, and by the pension commission of the city of Chicago.<sup>11</sup> Commissions to study taxation were created in Minnesota<sup>12</sup> and New Hampshire.<sup>13</sup> A bill providing for general reorganization of the Missouri state government, drafted by the Missouri Association for Economy in Public Expenditures, was defeated in the 1927 session, but several labor agencies were consolidated in a department of labor and industrial inspection.

No progress was made in the reorganization of the federal administration, which remains the most conspicuous illustration of bad organization in the United States. In respect to the national government, the most important occurrence from the standpoint of administration was the creation by the House of Representatives of a single committee on expenditures to take the place of the eleven committees on expenditure of the several departments which had never functioned in the past. The new committee will correspond to the committee on accounts of the British House of Commons, which performs such an important function in respect to receiving the report of the auditor and comptroller-general and on the basis of that report reviewing the conduct of administrative affairs generally. The new committee of the House of Representatives will probably be the one which will have referred to it, and will consider, proposals for changes in the organization of the government and other subjects having to do with putting the government on a more efficient basis.

When Congress shall have acted to introduce a more logical and intelligible organization of the federal bureaus, administration generally will have passed through the present phase of reconstruction. Presumably it will then appear that its achievements, significant though they are, remain only a prelude to later phases resting on assumptions more deeply laid than those which have served during the last decade.

**Personnel Administration.** Although Congress and the legislatures of most states were in session in 1927, there was little personnel legis-

<sup>8</sup> Session Laws of Iowa, 1927, Ch. 102.

<sup>9</sup> Session Laws of Ohio, 1927, p. 430.

<sup>10</sup> Session Laws of California, 1927, Ch. 431.

<sup>11</sup> Cf. Bulletin No. 70 of the Citizens' Association of Chicago.

<sup>12</sup> Session Laws of Minnesota, 1927, Ch. 382.

<sup>13</sup> Session Laws of New Hampshire, 1927, Ch. 201.



lation of consequence. Attempts were made in Texas, Illinois, and elsewhere to establish or extend the merit system, but with few exceptions the proposed legislation was defeated. The merit system was established by law in Alameda county, California, of which Oakland is the county seat. In the last decade one state (Maryland) has adopted the merit system, and one state (Connecticut) has eliminated it. The administration of the merit law took a decided turn for the worse in Chicago with the inauguration of Mayor Thompson in April, 1927.

Progress in developing the technique of testing continued during the year. The Bureau of Public Personnel Administration has developed a number of tests for fire, police, clerical, scientific, and skilled labor positions. The Bureau has also developed a simple and easily given test of honesty which shows that about half of those who seek positions of trust in the public service are willing to alter written statements to their advantage under conditions which seem to protect against discovery. The federal law reorganizing the prohibition unit required the selection of enforcement officers by open competitive tests. The director of research of the Civil Service Commission of the United States gave most of his time to developing the necessary written and oral tests. Standardized non-dictated spelling tests were also devised, but the final trials of the general adaptability tests were not completed. Further light was thrown on the intelligence of policemen by a study of the Palo Alto force of fifteen men.<sup>14</sup>

At its meeting in Buffalo in September, 1927, the Assembly of Civil Service Commissions for the first time broke up into small sections to study and report on personnel problems. The various sections made reports concerning classification, compensation, short answer tests, oral interviews, examining and certifying common laborers, and suspensions and removals; and after discussion and some modification these reports were adopted by the full Assembly. They may properly be considered the most authoritative statements regarding these matters that have yet been made by the professional group responsible for public personnel administration.

During the year extensive classification and compensation studies were made or brought to completion in Massachusetts, Wisconsin, Virginia, Cincinnati, Cleveland, and some other places. To a con-

<sup>14</sup> Maud A. Merrill, "The Intelligence of Policemen," *Journal of Personnel Research*, vol. 5, p. 511.

siderable extent, the recommendations included in the survey reports have been made a part of the current practice.

The dispersion of authority for conducting examinations and for directing the personnel work of the federal government was under fire during 1927. At the request of several civic agencies, the Bureau of Public Personnel Administration has drafted a proposed federal act providing for the centralization in one agency of the personnel functions now exercised by more than a score of existing central agencies or handled directly through congressional action.

The Cincinnati Bureau of Municipal Research developed a promising efficiency rating form during 1927 which has been adopted by City Manager Sherrill. In general, however, one fails to discover outstanding progress in public personnel management. Perhaps the most notable indication of fine work in this field is to be read in City Manager John H. Edy's letter to prospective employees, a document of permanent value not merely to Berkeley but to public officials everywhere.

**Police Administration and the Struggle Against Crime.** Significant steps were taken in the field of police and crime. The elaborate study of crime in Missouri was completed and published.<sup>15</sup> The Illinois Association for Criminal Justice was organized and undertook a systematic analysis of the problem of the administration of justice in Illinois and Chicago. Its report will be published in May, 1928. In various aspects of its investigation this organization is coöperating with the Institute of Criminal Law and Criminology, the Institute for Juvenile Research, and the University of Chicago. In New York a broad study of crime and of the municipal and rural police forces of the state was completed. The National Institute of Public Administration initiated a nation-wide study of rural police and published a volume, *City Police Administration in New York State*, by Bruce Smith. The Minnesota Crime Commission Report was published in the January, 1927, issue of the *Minnesota Law Review*. The National Crime Commission issued in 1926 Dr. Raymond Moley's *State Crime Commissions*, and in 1927 L. N. Robinson's *Criminal Statistics and the Identification of Criminals*.

The Advisory Committee on Crime appointed by the Social Science Research Council approved four studies in this field, including a

<sup>15</sup> Missouri Association for Criminal Justice, *The Missouri Crime Survey* (Macmillan, 1926).

bibliography of research material on crime and criminal justice, a study of the methods and results of the Cincinnati Court of Domestic Relations and Juvenile Court, the selection and editing of the papers of the late Thomas Mott Osborne, and a study of penal farms in the Orient. The International Association of Chiefs of Police instituted a significant study of police statistics, in cooperation with the National Institute of Public Administration and the Detroit Bureau of Governmental Research. An important study by Dr. F. M. Thrasher—*The Gang* (University of Chicago Press)—threw light on some of the conditions under which criminals are made. Finally, mention may be made of a substantial study of the Cincinnati police department completed by the local bureau of municipal research with the assistance of the New York Bureau of Municipal Research. The California crime commission was established<sup>16</sup> to study the causes, prevention, detection, and prosecution of crime. Indiana established a bureau of criminal identification,<sup>17</sup> and Minnesota a bureau of criminal apprehension.<sup>18</sup>

**Elections.** The most important event in this field during 1927 was the publication of a model registration system by the committee on election administration of the National Municipal League.<sup>19</sup> Bills providing for permanent registration were introduced in the legislatures of seven states, i.e., Pennsylvania, Ohio, Wisconsin, Iowa, Missouri, California, and Washington. These bills were patterned after the report of the committee, and in four states, Ohio, Wisconsin, Iowa, and Washington, passed the legislature. The Ohio and Washington bills, however, were killed by veto. There is a serious movement on foot in practically every northern state to secure permanent registration of the improved type, and undoubtedly it will result in a widespread success within the near future. The permanent registration proposed by the National Municipal League committee advocated an improved administrative technique in handling registration. Particularly notable was the recommendation of up-to-date records in the form of cards, loose-leaf, or visible records to take the place of the old bound volumes. Other features include centralized administration, doing away with precinct registration, and thorough means of re-

<sup>16</sup> Session Laws of California, 1927, Ch. 407.

<sup>17</sup> Session Laws of Indiana, 1927, Ch. 216.

<sup>18</sup> Session Laws of Minnesota, 1927, Ch. 224.

<sup>19</sup> *National Municipal Review*, Jan., 1927, supplement.

vising the lists periodically, using death reports, moving reports, and cancellation for failure to vote.

Municipal research bureaus and other civic organizations in many cities, including Kansas City, St. Louis, Philadelphia, New York, Cleveland, and San Francisco, have made permanent registration a part of their campaign. The National League of Women Voters has also been particularly active, and the Wisconsin branch sponsored the successful Wisconsin bill. A sum of approximately \$2,500 has been set aside by the research committee of the University of Wisconsin for a survey of election administration in Wisconsin. The inquiry will be made during the present year with Professor Joseph P. Harris in charge.

**Finance.** Steady progress in the refinement of financial methods was characteristic of the year 1928. Among the points which deserve recognition are the following:

1. A widespread acceptance of the idea that public improvements should be budgeted over a long term of years. The origin of such budgeting cannot be credited to 1927, but during that period there developed unusual interest in the subject. Early public improvement budgets were undertaken in Newark and St. Louis. In 1925, the Mayor's Committee on Finances in Detroit presented a program which was revised in 1927. In that year Municipal Administration Service published Mr. C. E. Rightor's pamphlet, *The Preparation of a Long-Term Financial Program*, and many communities have evidenced interest in such an extension of their budget procedure. The state of Michigan is developing a building program on its own initiative, and Wayne county (Detroit) is proposing a ten-year pay-as-you-go tax program to finance definite requirements.

2. A general agreement among students of government that the segregated budget developed in New York City following 1907, and adopted generally by all large cities and many smaller ones, as well as by many states and the United States, while it has produced beneficial results, is not the last word on the subject. In 1927 there was sincere and intelligent criticism of our budget methods. Recently there has been a tendency to advocate less detail in the appropriation ordinance and the adoption of an allotment system, either monthly or quarterly. At the same time, it has been suggested that, wherever possible, budget requests should be framed in units of work to be done, with estimated cost per unit, as compared with similar data for the preceding period. This suggestion opens large possibilities,

not only for economy in operation, but for comparative standards of measurement.

3. On this last point, the year was marked by an increased interest in the development of criteria by which the efficiency of government can be judged. The origins of this movement hark back to criteria formulated by Reed College, the University of North Carolina, the University of West Virginia, the University of Colorado, and others. In 1923, Dr. Charles A. Beard published his survey of Tokyo, which included certain more specific criteria for each city activity, followed by the detailed tests set up in Dr. Upson's report on the government of Cincinnati. In 1926-27 came the much more significant appraisal form for city health work by the American Public Health Association, along lines similar to, yet different from, those developed by the National Board of Fire Underwriters for fire departments. The twenty-five general tests of good government advanced by Professor W. B. Munro were used in studies of Dallas and Milwaukee. The National Municipal League, the City Managers' Association, and the Governmental Research Conference have appointed a joint committee on the subject, and from these beginnings the development of workable criteria is going on rapidly. This whole subject was systematically treated in Dr. Clarence E. Ridley's monograph, *Measuring Municipal Government*.

4. State supervision of local finance was the subject of legislation in Pennsylvania. All municipalities, except Philadelphia and Pittsburgh, must have the approval of the department of internal affairs before they may issue new bonds. The department may not question the expediency of the proposed issue, but merely its legality. It acquires, however, the authority to supervise sinking funds and to enforce compliance with the law relating to them. The local finance law of Ohio was thoroughly revised.<sup>20</sup> An important contribution to this subject is Wylie Kilpatrick's *State Administrative Review of Local Budget-Making*, published by Municipal Administrative Service.

**New Agencies of Interest to Students of Public Administration.** During the year steady progress was made in the foundation of new institutions and services. Among these may be noted the establishment of the Brookings Institution, which will act practically as a holding corporation for the Institute for Government Research and

<sup>20</sup> Session Laws of Ohio, 1927, p. 391.

the Institute of Economics. These two institutions will maintain their separate identity but will have a common board of trustees, which, among other things, will make appropriations from the general fund of the Brookings Institution to the affiliated institutes.

Municipal Administration Service was established at 261 Broadway, New York, under the direction of Mr. Russell A. Forbes, to serve as a clearing house for the bureaus of government research. During 1927 it published *Government Research*, by Dr. Charles A. Beard; *The Preparation and Revision of Local Building Codes*, by George H. Thompson; *State Administrative Review of Local Budget-Making*, by Wylie Kilpatrick; *Measuring Municipal Government*, by Clarence E. Ridley; *The Preparation of a Long-Term Financial Program*, by C. E. Rightor; and the *Codification of Ordinances*.

The following research organizations were established in 1927: (1) Buffalo Municipal Research Bureau; (2) Bureau of Research, Kansas City, Kansas; (3) Michigan Tax Economy League, Lansing; (4) Fall River Tax Payers' Association; (5) Oklahoma City Research Association; (6) Syracuse Committee on Municipal Research, Syracuse University; (7) Bureau of Municipal Research, University of Florida; and (8) Stamford Taxpayers' Association.

Dr. Luther Gulick estimates that seventy government research agencies are now spending annually not less than \$1,300,000. A full list of these bureaus will be found in the 1928 edition of the *Municipal Index*.

Two round tables at the Washington meeting of the American Political Science Association were devoted to aspects of public administration: federal relations, a study of interstate and regional organization, conducted by Professor A. W. MacMahon; and problems of federal administration, conducted by Dr. W. F. Willoughby.<sup>21</sup>

**Publications.** Space will not permit anything like a systematic bibliography, but a survey of the year's events may properly close with notice of a few of the more general publications of the period. Among these, one of the most important is Dr. W. F. Willoughby's *Principles of Public Administration*, a systematic presentation of the general principles and practice of modern administration, with special reference to the federal government. Dr. Willoughby also published two important volumes, *The National Budget* and *The Legal Status and Functions of the General Accounting Office*. The service monograph series was extended.

<sup>21</sup> See pp. 428-433 below.

The Harvard Studies in Administrative Law was initiated with two significant volumes: E. W. Patterson, *The Insurance Commissioner in the United States*; and John Dickinson, *Administrative Justice and the Supremacy of Law in the United States*.

The National Industrial Conference Board continued its studies in state taxation and finance. In the field of public health a notable contribution was made by Professor Robert E. Leigh, *Federal Health Administration in the United States*. The city manager movement was analyzed by Professor L. D. White in *The City Manager*. *The Journal of Public Administration* continued to present articles of the same high level that has characterized it from the outset. An account of several international conventions during 1927 will be found in the February issue of this *Review* at page 181.

## LEGISLATIVE NOTES AND REVIEWS

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**Permanent Registration of Voters.** There is a widespread movement for the adoption of permanent registration for voting. The plan does away with annual, biennial, or quadrennial registration, and establishes a fundamentally different system under which the voter is normally registered for life. It is known as permanent registration, because this one feature has attracted most attention; but in other details this new type of registration is essentially different from the older style. Registration is conducted at a central office throughout the year, instead of in the precincts on particular days. Outside offices may be used at times, but not in each precinct. Some form of individual records (loose-leaf, cards, or visible) takes the place of the cumbersome bound volume precinct registers. The work of keeping the registers cleaned of dead weight is not left to precinct officers, who are apt to be negligent and sometimes corrupt, but is performed by the clerical employees of the central office. The corrections are made upon the basis of routine information instead of relying upon challenges. Official death reports, cancellation because of failure to vote within a two-year period, transfers, and a house-to-house canvass of all registered voters, are used to purge the registration books. The voter who moves from one address to another within the city may transfer his registration to the new address upon request, and in some cities this is done for him without request, upon the basis of gas and electric removals, and other reliable information. Ordinarily the voter under permanent registration remains registered, and registered from one address only, as long as he continues to reside within the same city.

It is apparent that this method of registration is fundamentally different from the usual annual or biennial type. It operates upon the principle that it is possible and feasible to keep the registers purged of dead weight without going to the expense and trouble of conducting an entirely new registration every year or so. Under permanent registration there must be a continuous and thorough revision of the registers; otherwise they will become clogged with the names of persons who have moved away or died, and so will stimulate instead of prevent voting frauds. A number of states have grafted permanent registration upon a cumbersome, antiquated system of



annual registration, without making sound provision for purging, and have had serious trouble. This difficulty has been experienced notably in Louisville, where gross voting frauds occurred in 1925 because of the inadequacy of the new permanent registration law.<sup>1</sup> Indiana abolished a defective permanent registration law in 1927, and is now without any registration system whatever.<sup>2</sup> It will be interesting to note the results in the coming elections.

Boston may be credited with being the first large city to have a sound permanent registration system.<sup>3</sup> It was first put into operation in 1896. The principal feature of the Boston system is the police census of adults every year, which is thoroughly made. It is used to purge the registers and also to transfer the registration of persons who have moved within the city. No person can register who has not been listed in this census (except by petitioning for a special listing, which is made after investigation), and those who have been previously registered are stricken from the rolls unless they are listed from some address within the city. If they are listed from a different address, their registration is transferred.

In 1912 Milwaukee started a permanent registration system which is simplicity itself. The voter is registered on a card, four by six inches in size. When he moves he may transfer his registration by mailing in a simple transfer request. The police force makes a house-to-house canvass of all registered voters before principal elections, and the registration of those who are not found is cancelled. Registration is conducted throughout the year at the central office in the city hall. The annual cost of the system is about 12.5 cents per registered voter, as compared with an average cost of about 75 cents in cities with annual registration. The system results in a high registration with a minimum of bother to the voter.

Omaha was the scene of flagrant election frauds in 1912. The following year the legislature passed a new election law, including permanent registration of voters. This law was drafted without knowledge of either the Milwaukee or the Boston system, but it is

<sup>1</sup> David R. Castleman, "Louisville Election Frauds in Court and Out," *National Municipal Review*, Dec., 1927; Taylor v. Nuetzel, 295 S. W. 873 (1927).

<sup>2</sup> Session Laws of Indiana, Ch. 195.

<sup>3</sup> The permanent registration systems of various cities are described in detail by the writer in a series of articles in the *National Municipal Review*: Minneapolis, Sept., 1924; Milwaukee, Oct., 1925; Boston, Sept., 1926; Omaha, Nov., 1926.

similar in many details to the former. It has put an end to voting frauds, and has given complete satisfaction. Portland, Oregon, next adopted a permanent registration law in 1915, which has also operated successfully. The Portland law (which, in fact, applies to the entire state of Oregon) contains a provision for cancellation for failure to vote within two years, and this alone is relied upon to keep the registers purged. Other states which have adopted permanent registration include Connecticut, Maine, Maryland, Colorado, Utah, Montana, Nevada, Michigan, and a number of southern states. In most of these states the law is designed for rural conditions, and would not work well in a large city.

In 1922 the Chicago Bureau of Public Efficiency became interested in registration and Mr. George Sikes, of the staff, traveled widely, making a study of different systems in operation.<sup>4</sup> The following year Minnesota adopted permanent registration for the largest cities of the state, patterned closely after the Milwaukee law.<sup>5</sup> In 1925 the law was extended to all cities of 10,000 and over.<sup>6</sup> The success of the Minnesota law attracted a great deal of attention in other parts of the country, and civic organizations in a number of large cities undertook campaigns for permanent registration. In 1924 permanent registration was provided by the legislature of Kentucky,<sup>7</sup> and in 1925 by Indiana,<sup>8</sup> Idaho,<sup>9</sup> and Delaware,<sup>10</sup> though the law in each state was defective in important details. New Jersey followed in 1926.<sup>11</sup> The Municipal Research Bureau of Philadelphia became interested in the subject and drafted a permanent registration bill which was introduced at the regular session of the state legislature in 1925 and in 1926 at the special session. The National League of Women Voters adopted registration as a study subject in 1924.<sup>12</sup> State and local branches of this organization have been instrumental in pushing permanent registration bills.

<sup>4</sup> See *A Proposed System of Registering Voters and of Canvassing the Registration Lists in Chicago* (1923).

<sup>5</sup> Session Laws of Minnesota, Ch. 305.

<sup>6</sup> *Ibid.*, Ch. 375.

<sup>7</sup> Session Laws of Kentucky, Ch. 64.

<sup>8</sup> Session Laws of Indiana, Ch. 138.

<sup>9</sup> Session Laws of Idaho, Ch. 96.

<sup>10</sup> Session Laws of Delaware, Ch. 106.

<sup>11</sup> Session Laws of New Jersey, Ch. 328.

<sup>12</sup> Helen M. Rocca, *Registration Laws*, published by the National League of Women Voters (1925).

Bills providing for permanent registration were introduced in seven states at the 1927 sessions, and were enacted in two, i.e., Wisconsin<sup>13</sup> and Iowa.<sup>14</sup> The bills were passed in Ohio and Washington, only to be vetoed by the governors. In Ohio the registration bill was a part of a new election code, which was vetoed in its entirety because of other features. The Washington bill was vetoed ostensibly on the ground that public records should not be loose-leaf in form, as was provided. In three other states, Pennsylvania, Missouri, and California, the bills failed to pass the legislature. In Missouri and Pennsylvania the bills did not meet with the approval of the party machines, while in California the bill was defeated because it would have affected adversely the salary of the county clerks, who are paid a fee for each new registration. In all of these states the registration bills were in substantial accord with the specifications for a model registration system of the National Municipal League Committee.<sup>15</sup> In several instances they were patterned directly upon these specifications.

In 1927 Indiana repealed a cumbersome and ineffective permanent registration law. It is assumed that the next session of the legislature will grapple with the problem. A bill providing for a new scheme of permanent registration was passed by the Kentucky legislature of this year, but was vetoed by the governor after the legislature had adjourned.

The new registration law of Wisconsin applies to all cities in the state of 5,000 population or over, except in Milwaukee county. The bill was sponsored by the State League of Women Voters. The city clerk is made the chief officer of registration. He is required to conduct registration at his office throughout the year, prepare the lists of registered voters for use at the polls, and purge the registers periodically. He is given the power to conduct registration outside of his office when in his discretion this is necessary. The records may be either loose-leaf or cards, and contain an affidavit which is signed by the registrant. An unusual feature of the Wisconsin law is that the city clerk is required to secure each month from the gas and electric company a list of removals of service, and from this make the proper transfers within the city. The voter is to be sent a form notice of the transfer. It is anticipated that most removals will be taken care of

<sup>13</sup> Session Laws of Wisconsin, Ch. 208.

<sup>14</sup> Session Laws of Iowa, Ch. 21.

<sup>15</sup> "A Model Registration System," Supplement to the *National Municipal Review*, Jan., 1927.

without any bother to the voter. The Wisconsin law makes it possible at the election for the two poll clerks in each precinct to be dispensed with. The city clerk is required to supply the precinct board with two official typewritten lists of registered electors. As each voter casts his ballot, a serial number is entered after his name, and at the close of the election these lists take the place of the two poll lists which formerly were prepared by the clerks. This provision will reduce the cost of elections by more than the total cost of operating the registration system.

The new law in Iowa is modeled closely upon the Minnesota system. Of particular importance is the requirement that every voter shall sign a certificate of registration when he applies to vote, the signature to be compared with that on the registration records. The law at present applies only to the city of Des Moines, but it may be adopted by other cities having a population of 10,000 or over. The bill was drafted by the Des Moines Bureau of Municipal Research.

Permanent registration possesses many advantages over annual, biennial, or quadrennial registration. It is far less expensive, is more convenient to the elector, results in a higher registration, and is more effective in preventing voting frauds. Permanent registration cannot, however, be grafted upon existing periodic systems. It requires entirely different procedure, records, and methods of purging the registers. The experience of many large cities demonstrates that it is entirely feasible to keep the registers corrected from year to year, provided proper means are used. This type of registration is spreading rapidly and will probably be adopted by practically every state within a few years.

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**Primary Election Legislation in 1926-27.<sup>1</sup>** The primary legislation of the past two years is more voluminous than important. During

<sup>1</sup> Presidential primary legislation, covered in the February, 1928, number of the *Review*, is not included here. The legislatures of Kentucky, Louisiana, and Mississippi were in session in 1926 only; those of Alabama, California, Georgia, Massachusetts, Michigan, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington were in regular or special session in both 1926 and 1927; while South Dakota, Texas, Vermont, and West Virginia held both regular and special sessions in 1927. In the remaining states the legislatures met only in 1927. The session laws of Florida were not available at the time this note was prepared.

the sessions of 1926 and 1927 all of the states except Arkansas, Connecticut, Kentucky, Louisiana, Minnesota, Mississippi, Tennessee, Vermont, and Wyoming amended their primary election laws or modified features of other statutes which affect these primary laws. There is nothing startling in this legislation. No new states have been added to the list of those having direct, state-wide primaries; on the other hand, there is no case where such laws have been repealed or seriously modified. Few innovations have been introduced, and in many cases the amendments are of slight importance. Taken together, however, the changes indicate a persistent effort to iron out petty difficulties as they arise.

One primary election law has been rewritten and another has been recodified. When the supreme court of Illinois held the primary act of 1910 unconstitutional on technical grounds, the legislature passed a series of acts to take its place.<sup>2</sup> So far as nominations for state and judicial offices are concerned, this act made no important changes.<sup>3</sup> New Mexico has recodified her election laws, but with no essential changes so far as nominating methods go.<sup>4</sup>

Four states have made slight changes in the scope of their primary laws. Montana has made her direct primary act applicable to every political party which cast three per cent or more of the total votes for representative in Congress at the last general election;<sup>5</sup> Maryland has repealed the act extending the direct primary to county commissioners of Anne Arundel county;<sup>6</sup> North Carolina has extended her direct primary law to candidates for county offices and the lower house of the state legislature in Brunswick county;<sup>7</sup> and Rhode Island has brought the town of Warwick under the provisions of her caucus act.<sup>8</sup>

<sup>2</sup> *Laws of Illinois*, 1927, Chs. 189, 190, and 191, p. 459. This act has been upheld by the highest state court.

<sup>3</sup> For its effect upon the presidential primary, see note in this *Review*, February, 1928, p. 108.

<sup>4</sup> *Laws of New Mexico*, 1927, Ch. 41, p. 76. All nominations are still made by conventions.

<sup>5</sup> *Laws of Montana*, 1927, Ch. 7, p. 9. The original act applied to "all political parties."

<sup>6</sup> *Laws of Maryland*, 1927, Ch. 241, p. 425. This same provision, when repealed by Ch. 340 of the *Laws of 1922*, was submitted to referendum and defeated.

<sup>7</sup> *Acts of North Carolina*, 1927, Ch. 106, p. 344. There are still several counties where nominations are not made for these offices by direct primary unless that method is adopted by referendum vote of the county.

<sup>8</sup> *Acts and Resolves of Rhode Island*, 1927, Ch. 938, p. 1.

Several changes in date have been made, but in no case is the shift from a fall to a spring date or *vice versa*. The date of the South Dakota primary election has been changed from the fourth Tuesday in March to the fourth Tuesday in May, the dates of precinct, county and state proposal meetings being made proportionately later.<sup>9</sup> Less important changes in date are Massachusetts, from the eighth to the seventh Tuesday preceding the general election;<sup>10</sup> Michigan, from the second Tuesday in September to the Tuesday succeeding the first Monday in the same month;<sup>11</sup> Montana, from the ninety-first day preceding the general election to the third Tuesday in July;<sup>12</sup> and New Hampshire, from the first Tuesday in September to the Tuesday after the second Monday in the same month.<sup>13</sup> Maine<sup>14</sup> and South Carolina<sup>15</sup> have made slight changes in the polling hours for primary elections.

The most important change in qualifications for participating in primary elections has been made by Colorado, which has abandoned the "open" primary. Now when a voter presents himself at a primary election he must declare the name of the party with which he desires to affiliate and is given only the ballot of that party. The party affiliation given at the time of the first primary stands as a permanent party enrollment until changed by the voter or until his removal from the county.<sup>16</sup> Colorado's abandonment of the "open" ballot leaves Montana and Wisconsin as the only states in which a voter may participate in the primary of either party with no questions asked. In Kansas provision has been made for a party enrollment for the first time. The party affiliation given at the first primary after the passage of the act stands as a permanent record until changed by written request of the voter at least thirty days before a primary election, and he may participate only in the primary of the party with which he is enrolled.<sup>17</sup> Previously, Kansas depended upon the "challenge" method to keep voters from participating in the primaries of other parties. Texas has brought her qualifications for voting into line

<sup>9</sup> *Session Laws of South Dakota*, 1927, Ch. 113, p. 131.

<sup>10</sup> *Acts and Resolves of Massachusetts*, 1926, Ch. 96, p. 116.

<sup>11</sup> *Public Acts of Michigan*, 1927, No. 174, p. 279.

<sup>12</sup> *Laws of Montana*, 1927, Ch. 3, p. 4.

<sup>13</sup> *New Hampshire Laws*, 1927, Ch. 137.

<sup>14</sup> *Laws of Maine*, 1927, Ch. 17, p. 13.

<sup>15</sup> *Acts of South Carolina*, 1927, No. 105, p. 196.

<sup>16</sup> *Session Laws of Colorado*, 1927, Ch. 98, p. 319.

<sup>17</sup> *Session Laws of Kansas*, 1927, Ch. 203, p. 257.

with the decision of the Supreme Court of the United States invalidating the so-called "white primary" provision of the law of 1923.<sup>18</sup> The party state executive committees have power to prescribe qualifications for participation, provided that no person be denied the right to participate in a primary because of former political views or affiliations or because of "membership or non-membership in organizations other than the political party."<sup>19</sup> One cannot but wonder if there is not a thinly veiled allusion to the Ku Klux Klan in this provision. Massachusetts has stiffened the party enrollment feature of her law by making it necessary to appear in person in order to change one's party affiliation.<sup>20</sup> Maine,<sup>21</sup> Pennsylvania,<sup>22</sup> South Carolina,<sup>23</sup> and Oregon,<sup>24</sup> have made unimportant changes in their enrollment features.

When registration is required for general elections it is usually a qualification for participating in the primaries as well. Consequently it is necessary to give brief consideration to those changes in registration systems which affect the primaries. The most noteworthy development in this field is Indiana's repeal of her entire registration law.<sup>25</sup> Three states have made provision for permanent registration—Iowa in cities of over 125,000,<sup>26</sup> New Jersey in cities of 15,000 or more,<sup>27</sup> and Wisconsin in cities of 5,000 or more.<sup>28</sup> Minor amendments affecting registration were enacted in Delaware,<sup>29</sup> Idaho,<sup>30</sup> Missouri,<sup>31</sup> Nevada,<sup>32</sup> and South Dakota.<sup>33</sup>

<sup>18</sup> *General Laws of Texas*, second extra session, 1923, p. 74. This was declared unconstitutional in *Nixon v. Herndon*, 273 U. S. 536 (1927).

<sup>19</sup> *General Laws of Texas*, extra session of 1927, Ch. 67, p. 193.

<sup>20</sup> *Acts and Resolves of Massachusetts*, 1927, Ch. 101, p. 81.

<sup>21</sup> *Laws of Maine*, 1927, Ch. 221, p. 209.

<sup>22</sup> *Laws of Pennsylvania*, 1927, No. 463, p. 972.

<sup>23</sup> *Acts of the General Assembly of South Carolina*, 1927, No. 164, p. 269.

<sup>24</sup> *General Laws of Oregon*, 1927, Ch. 204, p. 248, to bring the enrollment features into accord with the new registration provisions of the amendment to Art. II, Sec. 2, of the constitution.

<sup>25</sup> *Laws of Indiana*, 1927, Ch. 195, p. 567.

<sup>26</sup> *Acts of the 42d General Assembly of Iowa*, 1927, Ch. 21, p. 13.

<sup>27</sup> *Laws of New Jersey*, 1926, Ch. 328, p. 714; amended 1927, Ch. 136.

<sup>28</sup> *Session Laws of Wisconsin*, 1927, Ch. 208.

<sup>29</sup> *Laws of Delaware*, 1927, Ch. 83, p. 212.

<sup>30</sup> *Session Laws of Idaho*, 1927, Ch. 200, p. 275.

<sup>31</sup> *Laws of Missouri*, 1927, p. 185.

<sup>32</sup> *Laws of Nevada*, 1927, Ch. 170, p. 289.

<sup>33</sup> *Session Laws of South Dakota*, 1927, Ch. 112, p. 130.

Many recent amendments are concerned with the way in which, and the time at which, declarations of candidacy and nominating petitions are to be filed. California has substituted for the petition method of placing candidates' names upon the ballot a novel "sponsor" system.<sup>34</sup> Sponsor declarations of candidacy may be filed by small groups (65 to 100 for state offices and United States senator). Sponsors must be members of the party in which the nomination is proposed, and the law attempts to secure a measure of responsibility for these candidacies by requiring the names of candidates and their sponsors to be printed in a pamphlet which is distributed to the voters before the primary. Sponsor declarations must be accompanied by the acceptance of the candidate. If the declaration of candidacy is made by the candidate himself, it must be supported by sponsor declarations. Nominal filing fees are required.

Another unique amendment comes from Oklahoma.<sup>35</sup> The filing of any person as a candidate for the nomination of a party may be challenged on the ground that the filing is frivolous or not made in good faith. If, within three days after the expiration of the filing date, a petition to this effect is signed by from 10 to 100 qualified voters (the number depending upon the importance of the office) the name of the candidate will be dropped from the ballot unless, within five days, he files a petition signed by from 100 to 1,000 qualified voters that it be left on, or deposits \$50 to \$250 with the election board. In case the challenged candidate receives ten per cent or more of the votes cast, the deposit is returned to him.

New Jersey now makes it necessary for a person endorsed as a candidate of a party by nominating petition to state that he is a member of the party in his acceptance of candidacy.<sup>36</sup> Individual proposal petitions for independent candidacies in South Dakota must now be signed by five per cent of the party electors, instead of one per cent as formerly.<sup>37</sup>

Arizona,<sup>38</sup> Michigan,<sup>39</sup> Virginia,<sup>40</sup> Nevada,<sup>41</sup> Nebraska,<sup>42</sup> Penn-

<sup>34</sup> *Statutes of California*, 1927, Ch. 838, p. 1686.

<sup>35</sup> *Oklahoma Session Laws*, 1927, Ch. 98, p. 158.

<sup>36</sup> *Laws of New Jersey*, 1926, Ch. 80, p. 126.

<sup>37</sup> *Session Laws of South Dakota*, 1927, Ch. 113, p. 135.

<sup>38</sup> *Laws of Arizona*, 1927, Ch. 12, p. 23.

<sup>39</sup> *Public Acts of Michigan*, No. 242, p. 279.

<sup>40</sup> *Virginia Acts of Assembly*, Extra session, 1927, Ch. 65, p. 157.

<sup>41</sup> *Laws of Nevada*, 1927, Ch. 124, p. 205.

<sup>42</sup> *Session Laws of Nebraska*, 1927, Chs. 98 and 99, pp. 277 and 278.



sylvania,<sup>43</sup> and Utah,<sup>44</sup> have made slight changes in the dates or hours when nominating petitions or declinations of nomination must be filed.

A few interesting changes have been made in the arrangement of the ballot and the designation of candidates on the ballot. In Montana rotation of names has been substituted for the old alphabetical order.<sup>45</sup> North Dakota has changed the designation of the ballot upon which judges, county officers, and school superintendents are nominated from "non-partisan" to "no party primary ballot."<sup>46</sup> California has found it necessary to provide that where two or more judges are to be nominated at the same time each vacancy shall be designated by a distinguishing number and each candidate for nomination shall specify for which vacancy he seeks to be nominated;<sup>47</sup> and Georgia has amended a provision requiring candidates for judge and the general assembly to do the same thing.<sup>48</sup>

We find few significant changes in provisions dealing with the determination of nominees and filling of vacancies. However, Kansas has made it unnecessary to hold a city primary unless there are more than two candidates for any office,<sup>49</sup> and Oklahoma has provided that the names of unopposed candidates for nomination shall be left off the primary ballot.<sup>50</sup> New Hampshire has given the party committees power to fill vacancies in nominations when no declarations of candidacy are filed. The committees must, however, pay the fee or file the petition required of candidates for nomination.<sup>51</sup> Nebraska has provided that when a political party fails to nominate a candidate for any office at the primary, such place shall remain unfilled unless filled by petition;<sup>52</sup> and Montana makes it necessary for a candidate receiving a nomination by a "written in" vote to file an acceptance

<sup>43</sup> *Laws of Pennsylvania*, 1927, No. 236, p. 372.

<sup>44</sup> *Laws of Utah*, 1927, Ch. 48, p. 69.

<sup>45</sup> *Laws of Montana*, 1927, Ch. 14, p. 19.

<sup>46</sup> *Laws of North Dakota*, 1927, p. 172.

<sup>47</sup> *Statutes of California*, 1927, Ch. 316, p. 528.

<sup>48</sup> *Georgia Laws*, 1927, No. 152, p. 245.

<sup>49</sup> *Session Laws of Kansas*, 1927, Ch. 201, p. 255. City primaries are non-partisan and in case only two candidates file for any one office their names appear on the general election ballot.

<sup>50</sup> *Oklahoma Session Laws*, 1927, Ch. 98, p. 160.

<sup>51</sup> *New Hampshire Laws*, 1927, Ch. 137.

<sup>52</sup> *Session Laws of Nebraska*, 1917, p. 275. In Nebraska in order to be nominated a candidate must receive at least five per cent of the party vote cast at the primary.

of the nomination and pay the fee required of those candidates who have their names put on the primary ballot by petition.<sup>53</sup>

Regulations of party committees and conventions must be considered as part of the machinery of party nominations. Michigan, Ohio, and Washington have joined the ranks of the states which give women representation upon the party state committees. Ohio<sup>54</sup> and Washington<sup>55</sup> require these committees to be composed of one man and one woman from each congressional district, thereby giving women equal representation; but Michigan<sup>56</sup> has increased the number of members from each congressional district to three and stipulates that only one of these *must* be a woman. California<sup>57</sup> and Massachusetts<sup>58</sup> have found it necessary to specify that only duly enrolled party members may be elected to membership on party committees. Amendments in Oregon<sup>59</sup> and Massachusetts<sup>60</sup> concern the organization of the state committee. The Oregon act specifically provides that the officers of the committee need not be members of the state committee or any county committee. Other minor amendments affecting party committees have been passed by Massachusetts,<sup>61</sup> Montana,<sup>62</sup> Rhode Island,<sup>63</sup> and Washington.<sup>64</sup>

Amendments affecting conventions have been made by Michigan, New York, and Texas. In Michigan, delegates to county conventions (which select the delegates to state conventions) may be chosen in conformity with the direct primary law if any county so decides by referendum vote.<sup>65</sup> New York has modified the rules governing convention procedure. It is no longer necessary for the permanent chairman to be chosen by roll call, and where only one candidate is placed in nomination for an office the vote may be taken *viva voce*.<sup>66</sup> Texas has changed the date of the state convention from the second Tues-

<sup>53</sup> *Laws of Montana*, 1927, Ch. 125, p. 405.

<sup>54</sup> *Laws of Ohio*, 1927, p. 175.

<sup>55</sup> *Laws of Washington*, 1927, Ch. 200, p. 287.

<sup>56</sup> *Michigan Public Acts*, 1927, No. 1, p. 3.

<sup>57</sup> *Statutes of California*, 1927, Ch. 372, p. 608.

<sup>58</sup> *Acts and Resolves of Massachusetts*, 1927, Ch. 25, p. 17.

<sup>59</sup> *General Laws of Oregon*, 1927, Ch. 109, p. 104.

<sup>60</sup> *Acts and Resolves of Massachusetts*, 1927, Ch. 295, p. 350.

<sup>61</sup> *Ibid.*, 1926, Ch. 100, p. 119.

<sup>62</sup> *Laws of Montana*, 1927, Ch. 98, p. 337.

<sup>63</sup> *Acts and Resolves of Rhode Island*, 1927, Ch. 1018, p. 178.

<sup>64</sup> *Laws of Washington*, Special session 1925-26, Ch. 158, p. 448.

<sup>65</sup> *Michigan Public Acts*, 1927, No. 110, p. 147.

<sup>66</sup> *New York Laws*, 1926, Ch. 632, p. 1128.

day in August to the "first Tuesday after the third Monday after the fourth Saturday in August."<sup>67</sup>

Four states have dealt with the problem of corrupt practices in primary elections.<sup>68</sup> The Arizona and New Hampshire amendments are interesting inasmuch as they increase the amounts which candidates may spend in primary campaigns. As Arizona increases the amount which candidates for United States senator may spend from \$1,500 to \$3,500,<sup>69</sup> and New Hampshire from \$1,000 to \$8,000,<sup>70</sup> it is apparent that the limits are still very low.

Unimportant amendments of a miscellaneous character have been made by Nevada (requiring sample primary election ballots supplied various officials to be the same size as the official ballot),<sup>71</sup> Texas (relating to assessment of candidates, certification of the results of primary elections, and hearing contests over nominations),<sup>72</sup> and Wisconsin (relating to the time when the secretary of state shall submit lists of nominees to county clerks and the fees charged local units for publishing notices of primary elections).<sup>73</sup>

Such has been the legislative harvest of the last two years so far as primary elections are concerned. But if we are to get a clear idea of the present-day attitude of legislative bodies toward the nominating process we must give at least brief consideration to some unsuccessful efforts to modify primary laws.

A bill providing for repeal of the direct primary was introduced into the Florida legislature of 1927 but failed of passage. In Indiana the 1926 state platforms of both parties declared for modification of the direct primary, and two bills, one repealing the direct primary outright and the other restoring the convention for all nominations except governor, were introduced during the 1927 session. Both failed to pass. In Kansas, in 1927, opponents of the direct primary introduced three bills, one providing for the repeal of the direct primary, the other two for serious modification. All failed of passage.

<sup>67</sup> *General Laws of Texas*, special session, 1926, Ch. 15, p. 27.

<sup>68</sup> *Alabama Laws*, 1927, No. 131, p. 89; *Laws of Arizona*, 1927, Ch. 22, p. 76; *New Hampshire Laws*, 1927, Ch. 137; and *Acts of West Virginia*, 1927, Ch. 64, p. 160.

<sup>69</sup> *Laws of Arizona*, 1927, Ch. 32, p. 76.

<sup>70</sup> *New Hampshire Laws*, Ch. 137, p. 156.

<sup>71</sup> *Laws of Nevada*, 1927, Ch. 169, p. 287.

<sup>72</sup> *General Laws of Texas*, 1927, Ch. 19, p. 24; Ch. 54, p. 77; and Ch. 196, p. 280.

<sup>73</sup> *Laws of Wisconsin*, 1927, Ch. 176, p. 178, and Ch. 269.

The modification of the direct primary was one of the leading issues throughout the 1927 session in Massachusetts. A bill providing for legalizing the pre-primary convention was reported favorably by the elections committee but was not passed, and the whole matter was finally referred to a recess committee of the legislature.<sup>74</sup> In Maine an initiated bill providing for repeal of the entire direct primary law was voted upon at a special election held October 18, 1927, and defeated by 30,114 to 20,027.<sup>75</sup> Although the repeal of the direct primary was the principal subject of discussion throughout the 1927 legislative session in New Hampshire, no action was taken. In New Jersey, in 1926, a bill repealing the direct primary failed of passage by one vote, and the question of repeal became an issue in the state campaign. Nevertheless the legislature of 1927 failed to take any action. Opponents of the direct primary in Ohio are faced with the necessity of amending the constitution. At the election of November, 1926, an initiated amendment which would have given the legislature the power to determine nominating methods was voted upon and defeated decisively. The direct primary continued to be a lively issue in Washington during the 1927 session of the legislature, but all proposals met with defeat.

Attacks upon the direct primary thus continue, but fewer repeal bills were introduced in 1927 than in 1925. This, coupled with the decisive votes in Ohio and Maine, indicates that there is no reason to expect a revival of the convention system.

In at least two instances during the past two years, primary election legislation has been rendered negative by court decisions. The decision of the Supreme Court of the United States in holding the Texas "white primary" act void has already been mentioned. In Oklahoma the highest court of the state has declared the interesting compulsory preferential voting amendment of 1925 null and void as a violation of that section of the state constitution which provides that "no power shall ever interfere to prevent the free exercise of the right of suffrage."<sup>76</sup>

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<sup>74</sup> The committee has recommended a return to the convention method of nominating secretary of state, state treasurer, state auditor, and attorney-general. See *Report of the Joint Special Committee on the Administration and Operation of the Election Laws*, December, 1927, p. 42.

<sup>75</sup> Information supplied by the secretary of state.

**Campaign Contributions and Expenditures, 1926-27.** Of the twenty-eight states that enacted legislation on the subject of elections in 1926-27, twelve passed statutes relating to campaign funds, and in ten of these cases changes were made in existing laws. Legislation on this subject can commonly be classified under three titles: limitation on expenditures of candidates or committees or both, specification of objects of legitimate expenditure, and requirement of filing statements covering campaign financial transactions. The legislation of 1927 (none was enacted on this subject in the sessions of 1926) covered all of these phases, the restrictions on expenditures receiving major attention.

Legislation limiting expenditures is further to be classified, (a) as to the method used in fixing the maximum amounts, i.e., flat rate per office, percentage of salary of the office, or in relation to the number of voters or vote cast in preceding elections, and (b) as to expenditures by the candidate personally or "by and on his behalf." Under these rubrics, the laws of 1927 were confined to fixing flat rates per office, and in each case covered expenditures by the candidate and on his behalf. This latter tendency seems readily attributable to the defense frequently set up in the past that large expenditures in question were made by friends or relatives of the candidate without his knowledge and consent. There seems also to be a tendency to exclude certain items of expenditure of a variable character from the maximum figures set by the laws.

Arizona, which in 1921 excluded from the limits fixed that year expenditures for stationery, postage, printing, and advertising in newspapers and picture shows,<sup>1</sup> changed the list in 1927 to read "exclusive of necessary personal, traveling, or subsistence expenses" and increased the maximum amounts. Candidates for nomination at the primaries are now limited as follows: United States senator, \$3,500 (formerly \$1,500); United States representative and governor, \$2,500 (formerly \$1,000); supreme court judge, \$1,000 (formerly \$750); other state officers, \$1,500 (formerly \$1,000); state senator and representative, \$250 (formerly \$200).<sup>2</sup>

<sup>78</sup> *Dove v. Ogleby*, 244 Pacific 798 (1926). For a discussion of the case see Robert E. Cushman, "Public Law in the State Courts in 1925-26," *American Political Science Review*, XX, 588 (Aug., 1926).

<sup>1</sup> *Session Laws of Arizona*, 1921, Chap. 172.

<sup>2</sup> *Ibid.*, 1927, Ch. 32.

Arkansas restricted expenditures in initiative and referendum elections by an act whose intent was declared to be "to limit expenditures [by persons and corporations] to \$25,000 in securing signers to petitions and for all other campaign expenditures in connection with initiative and referendum measures."<sup>3</sup>

Florida increased the maximum allowable expenditures "by the candidate himself or his campaign manager or committee" in nomination campaigns to the following amounts: United States senator and governor, \$15,000; other state offices, \$5,000; congressman, \$4,000; justice of supreme court, \$4,000; state attorney, \$1,200; presidential elector and delegate-at-large to national conventions, \$1,000; district delegate to national conventions, \$600.<sup>4</sup>

New Hampshire increased the maximum expenditures in nomination campaigns at the same time that it broadened the scope of the limitations. Previously, the limits applied to the candidate's personal expenditures;<sup>5</sup> but the new act reads: "all expenditures by a candidate or by others in his behalf with his knowledge during the calendar year of the primary, except personal traveling expenses of the candidate." The present limits are: United States senator and governor, \$8,000 (formerly \$1,000); United States representative, \$4,000 (formerly \$5,000); councilor, \$1,500 (formerly \$250); state senator and county officer, \$300 (formerly \$100); state representative, \$50 (formerly \$25).<sup>6</sup>

Tennessee for the first time imposed restrictions by limiting the amount to be expended by the candidate and by others on his behalf in the primary or convention to: United States senator and governor, \$10,000; United States representative, \$5,000; other state-wide offices, \$5,000; judge of supreme court, \$3,000; district attorney and circuit judge, \$2,500. Additional like amounts may be expended in the final election campaign.<sup>7</sup>

The West Virginia legislature was notably liberal in its regard for candidates in that it not only increased the maximum amounts for offices but excluded from the limitations necessary personal, traveling, and subsistence expenses of the candidate, as well as expenditures for stationery, postage, printing, distributing circulars and posters,

<sup>3</sup> *Acts of Arkansas*, 1927, Act 157.

<sup>4</sup> *Acts of Florida*, 1927, Ch. 12199.

<sup>5</sup> *Public Laws of New Hampshire*, 1925, Ch. 34, Sec. 5.

<sup>6</sup> *Ibid.*, 1927, Ch. 137.

<sup>7</sup> *Public Acts of Tennessee*, 1927, Ch. 59.

and telegraph and telephone service.<sup>8</sup> The present allowable expenditures in the primary "by or on behalf of any candidate" are: United States senator and any state office, \$100 per county; state legislator, \$125 per county; United States representative, \$2,500; county offices, \$300; other offices, \$50. Additional like amounts may be expended in the general election campaign.

Wisconsin separated the expenditures in nomination and election campaigns and revised the schedule adopted in 1913.<sup>9</sup> Expenditures "by or on behalf of any candidate in his campaign for nomination" shall not exceed the following amounts: United States senator, \$5,000; United States representative, \$1,750; governor, \$4,000; judge of supreme court, \$3,000; state superintendent of schools, \$3,000; other state offices, \$1,500. Expenditures in the campaign for election shall not exceed one-half of these amounts.<sup>10</sup>

Campaigning for office in Nebraska will undoubtedly henceforth be a more expensive process, following the addition of "newspaper advertising" to the list of unrestricted expenditures.<sup>11</sup> Pennsylvania kept pace with modern methods of campaigning by adding "the rental of radio facilities" to its list of lawful objects of expenditure, and then reflected the disclosures of the Reed investigation committee by limiting expenditures for "watchers" at the polls to \$10 per day in city election districts and \$5 per day in any other election district, there having been no previous limit set by law to the "wages" of watchers.<sup>12</sup>

Legislation in respect to publicity and filing statements of campaign funds was meagre in 1927. Arizona now requires that statements of receipts and expenditures be filed by "every person, firm, corporation, club, league, or association which engages in political propaganda and collects or expends any money or valuable thing" in connection therewith.<sup>13</sup> Minnesota formerly required monthly financial statements of candidates and committees from the opening of the campaign until election day, but now omits reports in July, August, and September.<sup>14</sup> Tennessee has provided, in a new and comprehensive

<sup>8</sup> *Acts of West Virginia*, 1927, Ch. 64.

<sup>9</sup> *Statutes*, Sec. 12, 20.

<sup>10</sup> *Session Laws of Wisconsin*, 1927, Ch. 263.

<sup>11</sup> *Session Laws of Nebraska*, 1927, Ch. 101.

<sup>12</sup> *Laws of Pennsylvania*, 1927, No. 233.

<sup>13</sup> *Session Laws of Arizona*, 1927, Ch. 66, 67.

<sup>14</sup> *Session Laws of Minnesota*, 1927, Ch. 75.

election law, that statements shall be filed by candidates, committees, and individuals showing in detail contributions received and expenditures made by them in any caucus, convention, primary, or final election, or in any referendum election.<sup>15</sup>

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**Conduct of Elections and Returns.** Legislation enacted at the recent sessions of the state legislatures regarding the conduct of elections, i.e., the election process from the time the registration books are turned over to the election officers to the close of voting, may be arranged under three heads: voting machines, assistance to voters, and election officers.

Two states, Arizona<sup>1</sup> and Arkansas,<sup>2</sup> legalized the use of voting machines throughout the state, and in a third state, Oklahoma, machines were legalized for Oklahoma county. In Iowa, where machines had already been legalized, a law was passed requiring voting machines to be used, except when more than seven political parties have nominated candidates whose names are entitled to be placed on the ballot.<sup>3</sup> In Pennsylvania a proposed constitutional amendment legalizing the use of machines received the affirmative vote of the legislature, and will be submitted to the voters.

The laws legalizing the use of voting machines are similar in content. The machines are to be bought and paid for by local authorities, and detailed specifications regarding the type of machine are given. In Arizona<sup>4</sup> and Arkansas<sup>5</sup> experimental use of the machines in one or more precincts may be made without binding the authorities to purchase machines for all the precincts. The Oklahoma law provides that the number of voters in the precinct shall not exceed 600. In all three states the method prescribed for reading the vote is the same. Reliance is placed upon bipartisanship to insure the accuracy of the reading, by requiring that the vote shall be read by officers of different political parties in the presence of watchers.

Some new regulations of the use of voting machines were adopted

<sup>15</sup> *Public Acts of Tennessee*, 1927, Ch. 59.

<sup>1</sup> *Session Laws of Arizona*, 1927, p. 149.

<sup>2</sup> *Session Laws of Arkansas*, 1927, p. 457.

<sup>3</sup> *Session Laws of Iowa*, 1927, p. 217.

<sup>4</sup> *Session Laws of Arizona*, 1927, p. 149.

<sup>5</sup> *Session Laws of Arkansas*, 1927, p. 457.



in states where machines have already been authorized. In Arizona<sup>6</sup> and Oregon<sup>7</sup> laws were passed limiting the time the voter can remain at the voting machine to two minutes. In California<sup>8</sup> and Oregon<sup>9</sup> acts were passed providing for election boards of three members where machines are used, allowing an additional member for each additional machine.

A few state legislatures dealt with the problem of giving assistance to voters. California adopted a system of giving assistance to illiterate and helpless voters whereby the need for assistance must be declared at the time of registration.<sup>10</sup> Assistance must be given by officers of different political faith, and a list of the assisted voters must be kept. In Nevada legislation was enacted providing assistance to voters physically disabled, such assistance to be given by two inspectors of different political parties.<sup>11</sup> Inability to read and write are not considered physical disability. And in New Mexico a law was passed authorizing assistance in the same manner to blind voters or those unable to mark the ballot without aid, requiring that a record of the assisted voters be kept in the poll-book.<sup>12</sup>

The Pennsylvania legislature also enacted some legislation regarding assistance to voters.<sup>13</sup> Assistance is allowed to voters who have declared that they cannot read the names on the ballot, or that by reason of physical disability they are unable to see or mark the ballot, or that they are unable to enter the voting compartment without assistance. A voter allowed assistance may select another voter to assist him. The judge of election is required to make note of such assistance in the "record of assisted voters," stating the name of the voter assisted, the form of disability, and the name of the person furnishing assistance. The record of assisted voters is returned to the prothonotary of the common pleas court in the case of general, municipal, or special elections, and to the county commissioners in the case of primary elections. In any case the record of assisted voters can be examined only upon the order of a judge of the court of common pleas. Penalties of a maximum fine of \$1,000 and one to two years

<sup>6</sup> *Session Laws of Arizona*, 1927, p. 147.

<sup>7</sup> *Session Laws of Oregon*, 1927, p. 85.

<sup>8</sup> *Session Laws of California*, 1927, p. 599.

<sup>9</sup> *Session Laws of Oregon*, 1927, p. 85.

<sup>10</sup> *Ibid.*, 1927, p. 471.

<sup>11</sup> *Session Laws of Nevada*, 1926-1927, p. 85.

<sup>12</sup> *Session Laws of New Mexico*, 1927, p. 101.

<sup>13</sup> *Session Laws of Pennsylvania*, 1927, p. 363.

imprisonment, for voters and election officers alike, are provided for violations.

The legislation regarding election officers had to do chiefly with the establishment of counting boards. The legislatures in Nebraska,<sup>14</sup> Nevada,<sup>15</sup> and New Mexico<sup>16</sup> established such boards. In Nebraska, in precincts where more than 150 votes were polled at the last election there is established a counting board of four members appointed by the clerk of the district court. In Nevada, in precincts having at least 200 voters a counting board of five members is provided, to be appointed by the county commissioners. In New Mexico a counting board of five is provided, three to be appointed by the county commissioners, with authority to choose two clerks. In all three states the laws establishing counting boards provide also for election boards of similar composition and manner of obtaining office.

In Missouri, in counties of 100,000 to 150,000 population, boards of election commissioners of two members, appointed by the governor with the consent of the senate, were established.<sup>17</sup> The members of the board have four-year terms, at a yearly salary of \$2,000. The board selects all precinct election boards and has charge of elections and registration. In New Jersey, legislation was enacted adjusting the compensation of county boards of election ranging from \$2,600 yearly in counties having population of 500,000 to \$300 in counties with less than 40,000.<sup>18</sup> In Pennsylvania, legislation was enacted regulating the compensation of watchers.<sup>19</sup> The maximum pay for watchers in city districts is placed at \$10, and in other districts at \$5.

Some legislation was enacted affecting the count and recount of the vote. It has already been stated that in the three states legalizing the use of voting machines the vote is required to be read by officers of different parties in the presence of watchers. Also it has been seen that counting boards were established in three states. In Nevada, legislation was enacted providing for a counting board to begin the count at the close of the polls.<sup>20</sup> In Nebraska the counting boards begin the count three hours after the polls open.<sup>21</sup>

<sup>14</sup> *Session Laws of Nebraska*, 1927, p. 268.

<sup>15</sup> *Session Laws of Nevada*, 1927, p. 291.

<sup>16</sup> *Session Laws of New Mexico*, 1927, p. 86.

<sup>17</sup> *Session Laws of Missouri*, 1927, p. 234.

<sup>18</sup> *Session Laws of New Jersey*, 1927, p. 375.

<sup>19</sup> *Session Laws of Pennsylvania*, 1927, p. 367.

<sup>20</sup> *Session Laws of Nevada*, 1927, p. 291.

<sup>21</sup> *Session Laws of Nebraska*, 1927, p. 268.

In Pennsylvania, some legislation was adopted affecting the manner of recount of the vote.<sup>22</sup> Ballot boxes may be opened by a judge of the common pleas court upon petition of three voters of the ward in which the precinct in question is located. The petitioners must make affidavit alleging that upon information which they consider reliable they believe that fraud was committed in marking the ballots or otherwise. The petitioners need not specify the particular act of fraud, nor offer evidence to substantiate their allegations. A deposit of \$50 must be made by the petitioners, which is forfeited if fraud is not discovered. Ballot boxes may be opened at any time within four months after the election, but no order or decision of the court will affect the official return unless ballot boxes shall have been opened before the completion of computation of all the returns of the county, save when a contest has been instituted.

In Wisconsin, an act provided that any candidate may have a recount in any precincts in which he charges fraud, irregularity, or illegality, upon the payment of a \$2 fee for each precinct. The opposing candidate is given the privilege of asking for a recount in any of the remaining precincts.<sup>23</sup>

There were a few minor acts regulating polling places, ballots, and duties of election officers; but the foregoing were the chief legislative enactments during the last session of the legislatures affecting the last two steps of the election process.

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<sup>22</sup> *Session Laws of Pennsylvania*, 1927, p. 360.

<sup>23</sup> *Session Laws of Wisconsin*, 1927, p. 445.

## NOTES ON MUNICIPAL AFFAIRS

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Unlike several of its immediate predecessors, the year 1927 was one of great activity in municipal affairs. Important charter changes, bitter and dramatic city elections, and startling disclosures of corruption have kept students of municipal government agog throughout the past twelve months.

### 1. CHARTER CHANGES

Dealing first with charter changes, two important cities, Indianapolis and Buffalo, have adopted new forms of city government; Toledo has elected a charter commission and is in process of joining the ranks of manager cities; while Cleveland is in the throes of a violent contest over the retention of the manager form of government and proportional representation.

**Indianapolis.** On June 21, 1927, the people of Indianapolis voted, 53,912 to 9,954, to accept the city manager alternative which has been available to cities of Indiana since 1921. The result was due in part to a well organized campaign beginning with the 1925 primary election, and in part to sensational charges of violation of the corrupt practices acts by Mayor Duvall, which ultimately resulted in his conviction by the trial court and his removal from office. The city manager campaign organization made no direct use of the Duvall scandal, consistently refraining from attacking the city administration. On the other hand, the daily flaunting in the press of matters discreditable to the existing city government created a state of public opinion which made effective opposition to the manager plan impossible. The Indiana law permitting cities to adopt manager government provides for a council of seven members nominated by petition and elected at large by simple plurality. There is obviously not much to be said for such a system of election. Minority control of the council is not only possible, but even probable, under it. Otherwise the Indiana statute provides for what may be properly called a normal manager form of government. The plan cannot go into effect until January 1, 1930. At the last session of the legislature, an act known as the Sims law was passed which provided that the terms for which city officers have been elected may not be abridged by the adoption of a change of government.

In the meantime the governmental situation in Indianapolis can scarcely be called satisfactory. Mayor Duvall was ousted by the council on November 27. On the same day the council named its president, C. E. Negley, acting mayor. There was, however, in the law a provision that in case of a vacancy in the office of mayor, the comptroller should succeed. When Duvall was removed, his wife was comptroller. She assumed the office just long enough to name Ira M. Holmes comptroller. Her fifteen-minute incumbency probably is the shortest term of service in the mayorship on record anywhere. Both Holmes and Negley attempted to act as mayor, but the courts decided in favor of Negley. The ultimate outcome of this squabble was the election by the council, which consisted of seven Republicans and two Democrats, of L. E. Slack, a Democrat, as mayor.

**Buffalo.** The movement for a new city charter in Buffalo took definite form on November 26, 1926, when the people voted nearly two to one in favor of the appointment of "a commission to draft a new city charter." Immediately following, on December 1, 1926, the mayor appointed seven citizens, headed by Hon. Daniel J. Kenefick, as members of the charter commission. The new charter was completed and filed in the city clerk's office on June 28, 1927, and two days later the council authorized its submission to the electors of the city at a special election to be held August 29, 1927. On that day, the electors approved the proposed charter by a vote of 32,079 for, to 20,962 against. The charter became effective January 1, 1928, officials having been nominated and elected in the regular primary and election during the fall of 1927.

The charter campaign during the six weeks preceding the special election date was prosecuted vigorously by both sides. Defenders of the existing "commission government" charter pointed to what they asserted to be a wonderful record of achievement during the past twelve years in schools, parks, playgrounds, harbor development, and water supply, and insisted that any worthwhile features could be added to the existing charter by amendment. The advocates of the new charter called attention to the fact that the budget and assessments had trebled under commission government and pointed out that over 180 amendments to the old charter had failed to correct defects and improve conditions. Both sides developed effective speaker's bureaus, and thousands of citizens were reached through meetings or heard the arguments as presented over the radio. It was an informed electorate that went to the polls on August 29, 1927.

The new charter provides for a scheme of government as follows: (1) a mayor, elected for a four-year term and ineligible to succeed himself. An annual salary of \$12,000 is provided, but is not effective until January 1, 1930. (2) A comptroller, elected for a four-year term. His salary is fixed at \$8,000 per year, and he is not limited as to the terms he may serve. (3) A council of fifteen members, five of whom, with the president, are elected at large, and nine from nine newly created council districts. Councilmen-at-large and president have four-year terms, and they are ineligible for the next succeeding term. District councilmen are elected for two-year terms and are ineligible to serve more than two succeeding terms. The salary of a councilman is fixed at \$2,500 a year, and the salary of the president at \$6,000 a year. (4) The administrative service is divided into eleven departments, viz., the executive, audit and control, treasury, assessment, public works, police, fire, health, social welfare, and law, paralleling, in all but the executive, existing departments or branches of the city government. The executive department was given four main divisions of budget, purchase, license, and markets, each to be headed by a director to be appointed by the mayor without confirmation by the council. (5) The mayor is given power of appointment (subject to confirmation by the council) of important administrative officers such as the commissioner of public works, corporation counsel, director of parks, police, fire, etc. The mayor's power of appointment, however, does not become effective until January 1, 1930. Until that date such appointments are to be made by a board of three, composed of the mayor, comptroller, and president of the council. This restriction was made because the present mayor holds over for two more years, the unexpired balance of his present term of office.

In general, the electors looked upon the new charter as an improvement over the old commission government charter in the following major respects: (1) separation of legislative from administrative functions; (2) provisions for a more efficient departmental organization; (3) provisions for a more efficient, better qualified personnel in administration through qualification requirements; (4) provision for an executive budget and a definite budget procedure; (5) provision for centralized purchasing; (6) provision for cleaning up deficiency bonds outstanding; (7) provisions for controlling expenditures; (8) provisions for expediting public work; (9) provisions for opening "closed doors" on paving and permitting property owners to have the type of pavement they want; (10) provisions requiring

cost accounting of and reporting on public work done by any city department; and (11) provisions for protecting the interests of citizens, taxpayers, and municipal employees.

At the November, 1927, election, the new councilmen, president of the council, and comptroller were elected. As the new charter provides for partisan nominations and elections, the political parties came back into municipal affairs for the first time in more than twelve years. The Republicans elected the comptroller, the five councilmen-at-large, and eight of the nine district councilmen. As the hold-over mayor is also a Republican, responsibility for municipal affairs in Buffalo for the next few years has been definitely placed upon the Republican party.

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**Cleveland.** Just seven years after the high tide of reform left Cleveland with a city manager, proportional representation, charter, she finds herself at the low ebb of reaction. It remains to be seen whether the lowest point was reached at the November, 1927, election in which the present charter was saved by six thousand votes, or whether it is yet to come at the April presidential primary when the contest is to be fought all over again.<sup>1</sup>

For many months before the November election of last year there had been signs of the gathering storm. It was whispered that Harry L. Davis, thrice-elected mayor of Cleveland and one-time governor of the state of Ohio, was gathering together the various elements of discontent for an attack on Hopkins and the charter; it was said that his objective extended even to the unseating of Maurice Maschke, Republican, from his place of leadership in the city and the county. About a year ago Davis filed his petitions for an election on his proposed charter. He made the mistake, however, of filing these with the board of elections rather than with the city council. After the supreme court of the state had decided that the latter was the proper course, Davis withdrew his proposed charter amendment for revision, and went to work to secure another set of petitions, the old ones having been retained by the board of elections. By this time the regular biennial councilmanic elections were approaching, and the charter election was set for the same date.

<sup>1</sup> This note was written in March, 1928. *Man. Ed.*

Besides the Davis amendment, two charter amendment proposals and a proposal for the election of a charter commission appeared on the ballot. Their apparent purpose was to serve as an offset to the Davis attack. The Friebolin amendment proposed changes in only ten of the 183 sections of the charter. It restored the single-member district system of election to the council and enlarged that body from twenty-five to thirty-three members. The preferential ("Mary Ann") ballot was substituted for the system of election by P. R. The rest of the charter, including the managership, was left intact. The Harris amendment, like that of Davis, was practically a new charter. A mayor, elected for a term of four years and placed in control of the administration, was substituted for the manager. A council of thirty-three chosen individually from the wards by the "Mary Ann" ballot was proposed. The Citizens' League sponsored the proposal for a charter commission, the methods of procedure set up in the existing charter, and the state constitution for the drafting and proposal of new city charters; and a list of names for the personnel of the charter commission was placed on the ballot. It was widely believed at the time that the men so named were acceptable to the two major party organizations, and, furthermore, that they would be favorable to the abolition of P. R. So much was to be thrown overboard to save the rest of the charter.

The Davis amendment was, in short, a strong-mayor charter. Some of its features were: a mayor popularly elected for a term of two years, who was to appoint all the administrative officers, was to be in charge of the administration, and was to receive a salary of \$25,000; a council of thirty-three, elected individually from the old wards by a plurality single-choice ballot; a board of control consisting of the appointive heads of departments, which was given the function of fixing the rates for publicly-owned utility services. The head of a department was authorized to make such changes in contracts as he might see fit and fix the price of such alteration without consulting the council which had in the first place approved the original contract. Only three departments were set up in the charter, and the council could not add others without the consent of the board of control. The board, furthermore, was given the right to grade and classify positions in the classified civil service. These, with other defective or vicious financial clauses, would have provided a form of government well-shaped to the purposes of the professional spoilsman.

The chief battle-line, of course, was drawn between the Davis



charter adherents on one side and the charter commission adherents on the other. Some of the anti-Davis coalition, however, publicly advocated the defeat of all four measures. The Harris and Friebohn proposals were practically forgotten in the struggle. It seemed to the writer that two fundamental lines of cleavage were discoverable in the contest. The one was personal and political—Davis against Maschke (and Hopkins incidentally); a struggle to wrest the city and county leadership from the latter. Dissatisfaction among some of the lower ranks of workers against the leaders of the Republican organization might have been an encouragement to Davis. It is to be remembered that about three years ago a charter election was held on the single proposal of abolishing the P. R. form of election, the Republican and Democratic machines leading the attack. It occurred in the summer time, when a light vote was both anticipated and realized. What looked to the party men as an easy victory developed into a defeat, largely through the listless attitude of some of the chief organization leaders. There must have been a considerable feeling, too, among deserving party workers that places at the City Hall had not been so numerous under the Hopkins administration as they should have been. The combination of a chief executive interested primarily in administration rather than jobbery with a frame of government which made irregular and questionable practices more difficult and a council upon whose work the light of day was constantly turned through the constant criticism of the small but able group of Independents, was distasteful to the humbler but more numerous body of party workers. The organization had swung too far to the Right.

The second fundamental cleavage was on economic lines: labor against the middle, professional, and capitalistic classes. Naturally, no such issue was made openly, but innuendos and accusations used so long and so successfully in other large cities to rouse the class spirit were employed by Mr. Davis and his lieutenants. Mr. Davis professed to have the one aim of "restoring the government to the people." Telling thrusts were made at Mr. Hopkins' supposed connections with the Chamber of Commerce, the American Plan Association, the Citizens' League, and various "high-brow" associations. The administration's encouragement of the production of grand opera at the Public Auditorium and its acquisition of a city airport were ridiculed. Unquestionably the unemployment situation furnished the major portion of the steam and passion of the campaign. As

usual, it was easy to fasten blame for slack employment on the administration. The Cleveland Federation of Labor took a decisive stand for the Davis proposals—in fact furnished the backbone of the Davis organization. A complete city-wide precinct and ward organization was set up in all but a few of the higher-class residential sections. Harry McLaughlin, president of the Cleveland Federation of Labor, announced that a victory in this campaign was essential to the continued existence of the unions; and under their leadership the largest registration for any municipal election in years (over 180,000) took place.

That politics indeed makes strange bed-fellows was strikingly shown in this election. The Republican and Democratic organizations, the Independents, and the Citizens' League were found consorting together. Organization men to whom but a short time before the manager plan and P. R. had been anathema found themselves defending those very things; though not at all whole-heartedly, and not at all in properly selected parts of the city. Professor Hatton might well have taken this occasion to smile. On the Davis side, besides the labor element, were found a group of the younger Democratic leaders, and "snowballing" groups from the Republican organization. The result was the defeat of all four charter proposals, the Davis cause losing by a scant 6,000 out of 150,000.

Since the scare of this narrow victory there have been evidences to the outside observer that the Republican organization and the city administration are coming to terms with various of the elements of the late opposition. Mr. Davis has for the time stopped his public attacks on the administration, although the pledge to his workers immediately after the election to re-submit the amendment in the spring has been kept. Mr. McLaughlin, of the local federation of labor, announced that he personally would take no part in the charter fight this spring. Some time later, in February, he triumphantly announced that the city services were now practically "unionized," a statement promptly denied by Mr. Hopkins. The new Davis petitions have been accepted and the charter amendment, somewhat altered in content, will go on the ballots at the time of the presidential primary. It was announced officially at the time of their filing that 20,000 of the signatures were forged or otherwise fraudulent, and that 21,000 were good, or about five thousand more than were legally required to place the charter amendment on the ballot. Of the 21,000 "good" signatures, however, nearly 7,000 appear to be

by unregistered, and therefore illegal, voters. An investigation of these irregularities is now being conducted by a committee of the council. Mr. Maschke has remained silent, and it is believed that he will take no active or open part in the charter fight. Interest in the matter seems to have collapsed. At the time of writing (March 13) there is very little newspaper discussion. Attention is centered on the Willis-Hoover fight in the preferential primary. The Maschke organization has pledged its aid to Mr. Hoover. It would seem to be the obvious thing for Mr. Willis to attempt to build up a rival organization in Cleveland; but at the present time it does not appear that he will be able to make use of the old Davis organization—a fortunate circumstance for the city manager cause.

It is the writer's belief that Mr. Hopkins' administration has given very general satisfaction to the business, professional, and middle classes of the city; that even labor's grievance against Mr. Hopkins was based chiefly on such disagreements as naturally might arise between employer and employee, namely, over terms of contracts, hours of labor, wages, and overtime; and that the attack on the charter was primarily only one incident in organized labor's tactics in the course of collective bargaining. There are real achievements to the credit of Mr. Hopkins: the stationary tax rate; the paying off of accumulated indebtedness from preceding administrations; the opening, widening, and paving of new thoroughfares and the extensive repaving of old ones; the excellent handling of the traffic situation; and the general efficiency of the various city services. To this might be added his arousing of the people to the importance of long-time planning for the city's future, particularly in the matters of lake-front development and river straightening.

The same day which carried the news of the defeat of the Davis charter brought the announcement of a concerted movement on the part of various civic organizations of Greater Cleveland in the direction of some sort of federated government for the metropolitan area. Cleveland is almost encircled by suburbs, to the number of fifty or more, ranging in size from villages of a few hundred inhabitants to Lakewood with 75,000 and Cleveland Heights with 50,000. A high percentage of the leaders in the civic life of the community live in the suburbs. A list of those most active in the late campaign would show a high percentage unable to vote because of their residence outside the city limits. It is an unsound situation which, if not changed, may extort its toll of bad government in the not distant

future. A Committee of Four Hundred has been appointed by Mayor Marshall to study the situation and bring forward plans for a measure of common government for the whole area.

The net result of the late attack on the charter seems to have been, for the moment, a loss to the city manager cause. The logic of the situation demands more concessions to the party workers and to city labor. What changes in this respect have been made is not certain at this time. Mr. Hopkins' tenure has never rested on an Independent majority, but on a bi-partisan coalition. His administration has necessarily been colored by this fact. In his first two councils, there was a bi-partisan majority of twenty-one, and a minority of four Independents. While theoretically in opposition, all but one of the Independents had voted for Mr. Hopkins' election as manager, and their constant and vigilant criticism of the conduct of his administration had proved in the long run to be constructive and a source of strength to his position. In the late contest, the Independents practically gave up all thought of scrutiny of or opposition to the offering of candidates by the bi-partisan combination; the saving of the charter was a far more important goal. The result was the almost complete wiping out of the opposition in the council. Professor Hatton's withdrawal because of his removal from the city, Mr. Witt's refusal to stand for reelection, and the defeat of Miss Marie Wing left only Mr. Kennedy, the least aggressive of the four Independents. The city has thereby been deprived of one of the most valuable features of the past four years: an Opposition which contributed greatly to the efficiency of the government and the people's interest in it.

EARL L. SHOUP.

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**Toledo.** [At the present time, a charter commission pledged to the adoption of the city manager form of government is functioning in Toledo. The circumstances leading up to the election of this commission are described as follows by Professor H. T. Shenefield.]

In the latter part of December, 1926, the mayor of Toledo discharged the service director, Mr. William T. Jackson, a very popular man and an able administrator. Such action might have been expected, as there had all along been a lack of coöperation between the mayor and the service director. The discharged director had a large following among the business men of the city, in whose eyes he immediately became a martyr to the cause of good government. The

press of the city joined in the denunciation of the mayor and the political machine.

When the outburst had subsided somewhat, cooler heads assumed control of the situation, directing the movement more to an ultimate solution of the dilemma of good government than to mere abuse and vilification. The press, especially the *Toledo Blade* and the *Toledo News Bee*, began to talk about the city manager plan. The chamber of commerce was foremost in the agitation for, and later in the study of, the plan. It might be remarked here that agitation for the city manager system was not new in Toledo; on the contrary, the plan had been advocated by the League of Women Voters for several years. During a period of a month or so, the chamber of commerce brought in such men as A. R. Hatton, Leonard D. White, and Lent D. Upson, all of whom talked on the city manager plan. As a practical effect of this wave of enthusiasm, the chamber of commerce appointed a special committee to study the subject; and when its report, favoring the adoption of the city manager plan with election of the council at large by the Hare system of proportional representation, was submitted, the chamber adopted the report by a vote of 29 to 1.

Shortly after, on January 25, an Independent City Manager Association was formed at the suggestion of the special committee. The organizing conference was open to all, and, as might have been expected, the Republican organization packed the meeting. A well prepared program for the election of officers, adoption of rules, and ways and means of securing a new charter was carried out over the votes and protests of the Independents, who were outnumbered approximately two to one. It was decided that inasmuch as the use of the initiative would be costly and would necessitate an extra election, the association should petition the council to pass such legislation as was needed in order to place the question on the ballot at the election of November, 1927. The council promptly passed the needed legislation, on February 2, providing for a vote on two proposals: (1) changing the charter, (2) election of a charter commission. Nomination was to be by petition of two per cent of those voting at the last preceding general municipal election, such petitions to be filed sixty days before the election, and candidates to signify on the ballot whether they opposed or favored the city manager plan. All candidates, in fact, were in favor of the city manager.

The main result of this unexpected turn of events was disheartening to the Independents, who were somewhat disorganized by their

defeat. At the last minute, however, only a few days before the deadline for filing petitions of candidacy, the Citizens' City Manager League was formed to put an independent slate of charter commission candidates in the field. Thirteen candidates were nominated on this ticket, and three of the "organization" slate were endorsed. Eight out of these thirteen were elected, besides the three endorsed by both factions.

Here, however, the mayoral campaign entered to crowd the city manager movement out of the headlines and to resurrect "more important issues." As a result of the August primaries,<sup>2</sup> Jackson, ex-service director, led Guitteau, his successor as service director, by 1,300 votes in the largest primary vote in the history of the city. It was a most bitterly fought campaign. Personalities were resorted to freely and a great deal of interest was aroused, with the result that the registration was exceptionally high for a municipal election (88,593), being exceeded only by the registration for the 1924 presidential election. Although the mayoral election attracted the major portion of the public interest, it was only a small part of the elector's interest at the polls. The elector had to mark six ballots. More specifically, 24 officials were to be chosen from 57 candidates; two bond issues were to be voted upon; two referenda were to be considered; besides the choosing of a charter commission and the question of deciding whether a new charter should be framed.

When the ballots were counted it was found that Jackson had been elected with a plurality of 6,654 votes over the nearest candidate, Guitteau; yet he was a minority mayor, with 33,672 votes out of a total mayoral vote of 80,530. The most significant result, so far as we are concerned here, was the vote on the question of changing the charter and the election of the charter commission. The question of changing the charter attracted but a small portion of the vote—forty-one per cent, to be exact. Within this forty-one per cent, the vote was little less than two to one in favor of change. It is evident that a considerable number of voters skipped this question, by mistake or negligence, because the vote for charter commissioners ran as high as 38,379. As has been mentioned, the independent slate of candidates for the charter commission was successful, inasmuch as eleven out

<sup>2</sup> Toledo has a non-partisan primary, but through some inadvertence the charter does not prevent independent candidacies at the final election. In the final mayoral election of 1927 there were three candidates.

of the fifteen charter commissioners were either sponsored or endorsed by this organization.

With regard to practical political experience, the charter commission includes in its membership two members from the charter commission of 1914, a former vice-mayor, a former director of finance and service director, a former secretary of the local bureau of municipal research, a member of the commission which directs the bureau, a former city health commissioner, a former member of the state legislature, a present member of the state legislature, and the president of the chamber of commerce. The occupational distribution of the group is such as to make it quite representative. Organized labor is ably represented by two members. The rest may be classified as follows: one federal judge, two lawyers, one social worker, one manufacturer, two doctors, one realtor, one printer, one sales manager, and two merchants. The commission is thus, it may be seen, not inexperienced in considering governmental questions, and is at the same time a fairly representative body. It has chosen Judge Killits as chairman, which position he held in the charter commission of 1914. The commission has already adopted some of the best administrative provisions of the old charter. A small council of nine is favored, but the commission proved to be sharply divided on the question of P. R. Several speakers on both sides of the subject have been heard by the commission, and final decision is being held in abeyance. There is every indication that the charter will be submitted to the electorate at the November election.

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**Newport.** Considerable publicity was given to the fact that the people of Newport, Rhode Island, adopted a city manager charter in 1926 by a vote of four to one. As a matter of fact, this manager charter has never gone into effect. The referendum on it was only advisory. On the first of January, 1927, an ordinary mayor and council government, provided by the so-called Lawton act passed by the preceding legislature, went into effect. The new council refused to submit the manager charter to the 1927 legislature. A citizens' committee undertook to do so, but the charter was smothered in the corporations committee of the Senate.

## 2. METROPOLITAN GOVERNMENT

**Pittsburgh.** The 1927 legislature of Pennsylvania passed for the second time the constitutional amendment previously described

in these notes providing for municipal consolidation in Allegheny county.<sup>3</sup> The amendment goes to the people of the state at the fall election of 1928. The legislature also continued the commission to study municipal consolidation in Allegheny county and instructed it to carry on an investigation and report a draft of a charter for consideration by the 1929 session of the legislature, provided, of course, the constitutional amendment is ratified by the people.

**Cleveland.** Professor Shoup's note above refers briefly to the creation of a committee of four hundred to bring forward plans for some sort of federated government for the metropolitan area of Cleveland. Impetus was given to this movement by the sudden realization of many suburban residents that they had a great stake in Cleveland, but could do little or nothing to determine the character of its government. The near passage of the Davis amendment awakened them to a sense of their present helplessness. The committee appointed by Mayor Marshall organized by electing Paul Howland, president of the Cleveland Bar Association, and a former congressman, as chairman, and C. K. Matson, of the Cleveland Foundation, as secretary. An executive committee of twenty-five was formed to carry on a study of the question. One of its sub-committees, known as the "fact finding committee," has been conducting a very interesting series of public hearings in which officials of the county, and of the various units of government within the county, have been called upon to testify.

**Montreal.** [The provincial government of Quebec has created a commission, popularly known as the Borough Commission, to study the question of the governmental situation on the island of Montreal. Mr. Frederick Wright, of the Montreal Municipal Service Bureau, contributes the following note on the situation there.]

The metropolitan district of Montreal during the last decade has grown so rapidly in population and area that its administration is fast becoming a serious problem. On the one hand, there are fourteen suburban municipalities, each a civic entity in itself, and on the other hand there is the city of Montreal proper, with its thirty-five wards, some of which are larger in population and area than any of the independent municipalities. This means that Greater Montreal has fifteen separate governing bodies to carry on its local administration, with no coördination, other than that of finance, between one authority and another.

<sup>3</sup> See this *Review*, XXI, 365 (May, 1925).



Financial coördination was brought about in 1921, when the Montreal Metropolitan Commission was established on the suggestion of a number of the well-governed communities adjoining Montreal that would not countenance annexation but were willing to bear their share of the burden of helping certain other adjoining municipalities out of their financial difficulties. While the primary purpose of the new commission was to administer the finances of the delinquent municipalities, it was also given the power of supervision and control over the finances of all the member municipalities, other than the city of Montreal. At the same time, it was given authority to borrow on the credit of the whole district, and to make loans to the municipal units under its jurisdiction.

In a word, the Metropolitan Commission, composed of fifteen members directly representing the councils of the municipalities comprising its membership, is an experiment in the borough system in so far as municipal finances are concerned. That the experiment has proved a success is evidenced in the annual reports of the commission, which show conclusively not only that the delinquent municipalities have been placed on the road to financial stability, but that all the units have profited by the fact that in addition to a continual checking up of their financial administration they have been enabled to borrow on more advantageous terms, because of the larger credit behind the borrowing, than would be possible on their own credit.

Whether the Metropolitan Commission will be the basis on which a complete borough system will be developed, or whether it will be eliminated and entirely new machinery set up for the administration of Greater Montreal, is the question now agitating the minds of those interested in the development of the district. One thing is very certain. The present situation is an impossible one. The city of Montreal itself cannot carry on much longer under its present system of administration, for the reason that it has not the confidence of the electorate. This was evidenced in a recent referendum when the proprietors refused the administration's request to be allowed to spend the sum of \$30,000,000 in improvements. That the improvements are necessary, no one will deny; but such is the lack of confidence in the capacity of the administration to handle the expenditure efficiently that the proprietors chose the lesser of two evils by either voting against the request or not voting at all.

This not only has brought the city administration to a sense of its impotency in the matter of major improvements but has brought the

possibilities of the "borough system" into the limelight of public discussion. The leading newspapers have expressed themselves as being in favor of the principle, as have many of the leading citizens; and the provincial government has appointed a special commission to study the system as a mode of government for the metropolitan district.

Although still in the preliminary state, the Borough Commission has already recommended that the Metropolitan Commission be given more powers, including the supervision of the finances of all the municipalities on the island of Montreal—about twice the number of the present members of the Metropolitan Commission. This recommendation has been partially put into effect by the provincial legislature in giving more powers to the metropolitan body, although supervision over the finances of the outlying municipalities was not granted to it.

This is at least an indication that in Montreal the tendency is toward the borough principle of government. Many obstacles, however, must be overcome before there can be a general acceptance of the system, one of which is the fear among the French-speaking citizens that under it they would lose their present dominant position. Such fear is, of course, unfounded, but nevertheless it is there, and must be overcome before any real headway can be made. Then there are the demagogues who see in the adoption of the borough system the end of their sinister influence. They probably have real cause for fear.

It comes down to this. The borough system, so far as Greater Montreal is concerned, is under favorable consideration, but much intensive education must be carried on before it is accepted. The fact that there is an impasse regarding the physical development of the city is in its favor, for the electors realize that many millions of dollars must be spent in improvements if Montreal is to keep in the vanguard of progress; and, being doubtful of the present system of administration, they are ready to consider the adoption of a system which in its financial aspects has worked out so well in the Montreal Metropolitan Commission. If the Commission had the same control over the finances of the city of Montreal that it has over the finances of its other member municipalities, the vote on the referendum already mentioned would have been very different. But then there would have been no need for a referendum, which is a most unsatisfactory method of controlling public expenditures.

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## 3. MUNICIPAL ELECTIONS

Several elections of extraordinary interest have taken place during the past year. Thompson and Dever waged a titanic battle for the mayoralty of Chicago. This election attracted nation-wide interest and was so fully treated in the press, and subsequently in periodical literature, that there seems no necessity of offering further details here. In Philadelphia, the Vare candidate, Harry A. Mackey, defeated the independent candidate, J. Hampton Moore, in a hard-fought election last November. While the independents were defeated, they succeeded in seriously threatening the machine's supremacy, and there is more hope than for a long time of a genuine civic awakening in Philadelphia.

Detroit experienced its hottest municipal campaign in many years. Detroit employs the non-partisan primary. At the primary on October 11, John C. Lodge, president of the council, who had been drafted to candidacy by a petition signed by 50,000 voters, secured an absolute majority over the six other candidates. His nearest rival, Mayor John W. Smith, was left to contest the final election with him. In the ensuing campaign, as in the primary, Lodge made no speeches and gave out no statements. Smith, perhaps in desperation, attempted to make capital of Lodge's dry support by taking a strong stand against prohibition and practically promising an open town. The issues of the campaign became, however, inextricably confused. Religious, racial, moral, and other questions undoubtedly played some part in the result. After all, however, the main question was good government vs. mediocre politicalized administration. For nine years Mr. Lodge had been president of the council and a steady influence for the best type of city government. In spite of the political ballyhoo raised by his opponent and the spectacularly vigorous canvass which he made, the people elected Mr. Lodge by a majority of twelve thousand. The prospects of the Lodge administration are discussed below in a note contributed by Mr. W. P. Lovett. of the Citizens' League of Detroit.

In November Cincinnati had its second election by proportional representation under the manager charter. Friends of the charter won a complete victory, as is described in a note by Professor Lowrie below. The Citizens' Republican Committee of Rochester, New York, was victorious in the primary election held September 20 last, thus insuring that the Rochester charter would be carried out by persons friendly to the manager system. After the election of November the

council selected Mr. S. B. Storey, director of the Rochester Bureau of Municipal Research and one of the leading advocates of the charter, as city manager. In San Francisco, Mayor James Rolph, Jr., who has been continuously mayor since 1911, was elected for another term of four years. This is believed to be a record for large cities in this country.

It would be impossible to discover in these elections any general tendency. Ballyhoo won in Chicago and lost in Detroit. The machine was repudiated in Toledo and accepted in Philadelphia. In Cleveland the regular machines of both parties supported the manager plan against the assault of a popular aspirant for leadership. The ways of democracy are as hard to fathom as ever.

**Cincinnati.** The charter group was again successful in the November elections in Cincinnati and retained the six seats won in the first contest, while the Republican organization lost one seat to an Independent candidate. Seven of the nine councilmen were reelected to office. The victory of the charter ticket was due in large measure to public approval of the unusual accomplishments of the last two years, and in part to the political sagacity of the leaders throughout the series of campaigns. The election of 1924, which resulted in the adoption of the council-manager form of government with a council chosen by proportional representation, and the election of two years ago which "kept the charter in the hands of its friends," have been described in the pages of this journal.<sup>4</sup> It was appreciated that the real test of the reform movement would come at the election of 1927 when the charter party would be on the defensive. This test has now been met.

Cincinnati was fortunate in the character of the men who composed the first council under the new system. They employed a manager with administrative ability, a charm of manner which quickly ingratiated him with the people, and a personality which complemented the personal qualities of the councilmen themselves. These men elected by the people did not refuse leadership, and the mayor especially has become a dominant force in the community. The combination of Mayor Seasongood and Manager Sherrill is an unusual one. The former is a leader of reform; the latter, the man to carry out the policies which the representatives determine upon. Consequently, the manager himself never became a campaign issue. Both groups pledged him support. As the mayor said of him, "He personifies the people's own desire for good government."

<sup>4</sup> Vol. XX, p. 367 (May, 1926).

The campaigns of 1924, 1925, and 1927 were contests between the old Republican organization, in almost undisputed control for a generation, and a fusion of Republican insurgents and Democrats. After a victory won under such circumstances, the question of patronage was likely to prove troublesome. The Democratic element was anxious to replace the Republican workers with men from their own party. But they had succeeded in electing only two of the nine councilmen, and the other members were rather indifferent to their claims. The charter group was not built upon a patronage basis. Some changes in officials were made, but for the most part only those employees who continued active in partisan politics in violation of the state civil service law were discharged. The experienced men who were retained contributed to the efficiency of the administration, and the old organization was weakened, since it was no longer able to use public employees as ward and precinct workers, or to exact the customary contributions of two and one-half per cent of their salaries. Toward the close of the first term a personnel classification study was completed and installed. Civil service has been honestly administered for two years. It is becoming efficient.

The record of the first two years of the city-manager system was one of unusual achievement. Streets which had become almost impassable were rebuilt; property fast falling into destruction has undergone rehabilitation; the saving in contracts has been astonishing. Practically all bonds submitted for approval have been voted, since the people believe the money will be spent wisely. The old feeling of pessimism has yielded to a more hopeful outlook. Sensing the strength of the administration, the Republican organization listened attentively to proposals for an armistice which would continue the old council without change for another two-year period. But neither group was quite willing to accept such a solution. The leaders of the old party were fearful that if no ticket were in the field their organization might slip from their grasp, and the charter's friends hesitated to sponsor candidates whom they had fought bitterly, and who were identified with policies that they had been trying to overthrow. The latter renominated five of the six men whom they had elected to the first council, and re-elected all five, as well as one new member.

The Republican party submitted the names of the three members they had elected two years before, included two councilmen already renominated by the charter organization, and refurbished their ticket with three "hill-top" candidates—a bit of window dressing

which they had neglected in the first campaign. But the strength of the party was centered on the professional politicians, and they gave little aid to others on their slate. The attack on the administration was along two lines: first, that the improvements were material ones, made possible only because funds previously denied were now available; and second, that the strong two-party system needed for the national government required party allegiance even in municipal elections. The former argument carried little weight in view of the well-known extravagance and mal-administration of the engineering and other public works departments under former administrations. The latter argument caused some strong party men to pause. Yet at this same election a congressman was elected to fill a vacancy. The Republican organization defeated the Democratic candidate for Congress decisively, even though their major attention was centered on the municipal campaign. There has been no gain to the Democrats at the expense of the Republican group, but rather the people in these two elections have pledged their allegiance to the charter group dedicated to better local government.

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**Detroit.** According to unbiassed observers, Mayor John C. Lodge, of Detroit, has justified since he was installed on January 10 the forecast that his two-year administration, to which he was elected last November, will mark the beginning of what should be another decade of creditable government in a metropolitan city. The first decade began in 1918 with adoption, by a heavy majority, of the present strong-mayor, small-council plan in the charter then submitted to popular vote. Under this plan the city met with remarkable success the problems of finance, expansion, and improvements incident to a doubling of population. In the past three years, however, there was a real threat of a capture of local control by gentlemen more interested in playing politics than in promoting business-like and economical administration. There had appeared in numerous elections a civic indifference which came to a head last year. The issue was joined with fair clearness, on November 8, in the contest for mayor between the incumbent, John W. Smith, and Mr. Lodge. Though the margin of victory for the Lodge forces was only 12,000 votes, the nature of the campaign was such as to satisfy all concerned with the reality of the popular decision.

Having spent most of his life in Detroit, and having given the past twenty years to public service, Mr. Lodge flatly declined to make any personal campaign. He was "drafted" with petitions for his nomination, signed by 50,000 voters. He did not make a single speech nor issue a single statement during the contest. Interested citizens, and a part of the press, gave publicity to the opinion that Mr. Lodge's public record was entirely sufficient, as a platform and as a campaign technique. His course thus far has been one of straight non-political insistence on doing the hard job without deviation from strict business principles. He has convinced the people that the campaign roorbacks, charging extremism on the ticklish question of prohibition enforcement and on the religious issue, were only political claptrap.

Mr. Lodge served continuously, after the new charter went into effect, as the acknowledged leader of the council of nine, elected at large. He is familiar with the city government in all its ramifications, and knows the temper both of officials and of the people of the city. As an adroit diplomat, he knows how to get done things necessary or desirable, without flourishes of publicity, and he is equally skillful in quietly side-tracking the programs of anti-community manipulators. Knowing the facts, the system, and the personnel, he hews to the line without fear or favor.

Attacking first the problems of finance, he called into conference the council members regarding the annual city budget, the costly widening of many streets, etc., and thus got agreement at the start. He announced that all department heads would function with absolute freedom from politics, and would also be held responsible for results. He favors a fair degree of press publicity—after things are done, not before. He has even opened up the question of a new deal in the civil service; a movement has been initiated to make radical improvements, by charter amendment or otherwise, so as to give the city a better guarantee of freedom from political intrusions into the departments. His handling of financial matters has indicated a combination of courage and conservatism.

One result has been serious study of the city manager plan as a future possibility. An increasing number of citizens are recognizing the hazard of political election, rather than scientific selection, of the chief executive. The question is not being pushed by propagandist methods, but is being debated in a way to get the facts before the people, as those facts are known to be available in the city-manager

cities. It is reasoned that Mr. Lodge, in the manner of his election and in the temper of his administration, is himself something of a city manager, and that the present advantages could be assured for the future by some simple changes in the charter.

Enjoying an election system that is remarkably free from dishonesty and inaccuracy, it is said that Detroit, under present conditions, is close to being "a pure democracy." Most of its municipal troubles are of the incidental sort—incidental to the factor of personnel rather than to system: the people in office, and the people who put them into office. Now comes the question from some anxious ones as to whether the noiseless efficiency of the present régime may not lull the public again into lazy indifference, neglect of the ballot, and various other evils. Provided his health continues good, the majority hope or believe that the city may anticipate a réélection of Mayor Lodge in 1929, and thus enjoy at least a quadrennium of peaceful and effective government.

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*Detroit, Mich.*



## FOREIGN GOVERNMENTS AND POLITICS

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**The English Cabinet Secretariat.** No one of the many changes in the English constitution during the World War is more interesting than the establishment of the cabinet secretariat. The device came into being under the stress of war-time conditions, as a result of the complexity of the problems to be dealt with, and of the need for centralizing the activities of the government. Its retention after many other features of the war administration have proved only transitory is an example of the permanence that war-time institutions sometimes acquire.

Before the war no minutes of cabinet meetings were kept. The only record of cabinet decisions was contained in the letter which the prime minister wrote with his own hand to the sovereign, reporting only those decisions which he thought should be brought to the sovereign's attention. A copy of each letter was kept for reference by the prime minister.<sup>1</sup> Since it was considered bad form to take notes in cabinet meetings, individual members had to depend upon memory when proceeding to apply cabinet decisions in their own departments.<sup>2</sup> Such procedure was unbusinesslike, and was one of the factors that rendered the cabinet system cumbrous and inefficient in the conduct of a great war. The War Cabinet needed an agency to prepare information for its consideration, to keep an accurate record of the many and vitally important decisions it made, and to transmit those decisions to the departments charged with ultimately carrying them into effect. Under such circumstances, the cabinet secretariat came into existence.

The immediate antecedent of the cabinet secretariat was the secretariat of the War Committee of the Asquith coalition (1915-1916),<sup>3</sup> which in turn developed from the secretariat of the Committee of Imperial Defense.<sup>4</sup> In 1895 a national defense committee of the

<sup>1</sup> Mr. Asquith, 155 H. C. Deb. 5 s. 228.

<sup>2</sup> "Cabinet Etiquette" (ed.), *Spectator*, CXXXVII, p. 4 (July 3, 1926). See also letters in the *Times* by Mr. Geoffrey Drage (June 26, 1922), Mr. G. E. Buckle, the biographer of Lord Beaconsfield (June 16, 1922), and Mr. Arthur Ponsonby, who was for a time Sir Henry Campbell-Bannerman's private secretary (July 3, 1922), discussing the point as to whether or not ministers were often left in doubt concerning cabinet decisions.

<sup>3</sup> Mr. Lloyd George, 88 H. C. Deb. 5 s. 1343.

<sup>4</sup> Mr. Asquith, 155 H. C. Deb. 5 s. 226-231.

cabinet was set up, with the prime minister as chairman. In 1904, after the Boer War, it was reorganized by the Balfour administration as the Committee of Imperial Defense, and at that time consisted of the prime minister, five other members of the government, and four eminent military and naval experts. From its inception the Committee of Imperial Defense had a secretariat which was frankly designed to aid the committee in its main purpose, namely, to provide the machinery by means of which military and naval policy might be continuous and based upon the best advice. The secretariat was custodian of important military and naval secrets, and was in charge of the administrative work when the committee was not in session. With the outbreak of the World War, the activities of the Committee of Imperial Defense increased, and its membership tended to enlarge.<sup>5</sup>

In May, 1915, the Liberal cabinet which had been in charge of affairs during the first year of the war was enlarged into a coalition, representing eighty-eight per cent of the House of Commons. On November 2, 1915, Mr. Asquith (now Lord Oxford and Asquith), who continued as prime minister for over a year, announced that since the beginning of the war there had been a large number of cabinet committees, one of which, in charge of the actual conduct of the war, tended to be permanent. That committee was to be more formally organized, and to consist of the five or six most important cabinet members. This war committee was to have a secretariat, the chief duty of which was to record its decisions for transmission to the cabinet, so that the cabinet could retain supreme control over policy.

In December, 1916, the Asquith coalition was succeeded by the War Cabinet, under the leadership of Mr. Lloyd George. In his first speech after becoming prime minister, Mr. Lloyd George explained that the old War Committee had been amalgamated with the new cabinet, and that its secretariat would be continued as an adjunct of the cabinet as a whole. "The old War Committee," he said, "had what the cabinet had not, it had secretaries to keep a complete record of all decisions." He went on to say that the staff of the secretariat would be enlarged, and that the cabinet would be in close contact with all departments as never before.<sup>6</sup> The Committee of Imperial Defense did not share the fate of the War Committee. It continued to function, but its secretariat was combined with that of the War Cabinet.<sup>7</sup>

<sup>5</sup> John A. Fairlie, *British War Administration* (New York, 1919), pp. 44-46.

<sup>6</sup> 88 H. C. Deb. 5 s. 1343.

While the secretariat of the War Committee was the immediate predecessor of the cabinet secretariat, it is doubtless true that it was mainly the experience of the secretariat of the Committee of Imperial Defense that was utilized in its development. The report of the War Cabinet for 1917 says, "The War Cabinet secretariat is built up on the nucleus of the secretariat for the Committee of Imperial Defense."<sup>8</sup> Mr. Lloyd George made a similar statement in the House of Commons, on June 13, 1922.<sup>9</sup> The career of Lieut.-Col. Sir Maurice Hankey, the present secretary to the cabinet, also shows the immediate influence of the secretariat of the Committee of Imperial Defense upon the cabinet secretariat. In 1908 Sir Maurice was appointed assistant secretary to the Committee of Imperial Defense; in 1912 he became secretary. In December, 1916, when the cabinet secretariat was organized, he was placed at its head, while still remaining secretary to the Committee of Imperial Defense. Since June 1, 1923, he has also been clerk of the Privy Council.

The history of the cabinet secretariat falls into three stages. The first extends from the earliest appearance of the organization in December, 1916, to June, 1922, when severe criticism arose in the House of Commons and the press. The second is the period of criticism, extending from June to October, 1922. The third began with the reorganization by Mr. Bonar Law, when he became prime minister in October, 1922, and extends to the present day.

During its first year, the secretariat consisted of Sir Maurice Hankey and ten assistant secretaries, with an office establishment at No. 2 Whitehall Gardens.<sup>10</sup> A clerical staff and messengers brought the total of its employees to over fifty. Its duties are summed up in the report of the War Cabinet for 1917 as follows: (1) to record the proceedings of the War Cabinet; (2) to transmit decisions; (3) to prepare agenda papers; to arrange for the attendance of ministers and other persons concerned; and to procure and circulate documents

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<sup>7</sup> *Times*, February 14, 1917; *War Cabinet: Report for the Year 1917* (Cmd. 9005, London, 1918), p. 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> 155 H. C. Deb. 5 s. 266. In his new treatise, *The Mechanism of the Modern State* (Oxford, 1927), II, p. 84, Sir John Marriott finds the origin of the cabinet secretariat in the secretariat of the Committee of Imperial Defense, without noting any intervening stages by which the service was introduced into the cabinet.

<sup>10</sup> *War Cabinet: Report for the Year 1917*, p. 3.

required for discussion; (4) to attend to correspondence; (5) to keep minutes of meetings, of which a complete file was sent to the ministers most closely concerned with the conduct of the war; also to other departments when concerned; and (6) to prepare weekly reports by arrangement with the secretaries of state for foreign affairs, India, and the colonies on the matters with which they were concerned. These reports were sent to all ministers.<sup>11</sup>

The report of the War Cabinet for 1918 contains the following statement: "The secretariat continued to perform the functions allotted to it as described in the previous report. In addition, it supplied the secretariat for the standing committees . . . , for the Imperial War Cabinet, and for all or nearly all of the committees set up by the War Cabinet for special enquiries."<sup>12</sup>

The "khaki election" of December, 1918, returned the Lloyd George coalition to power with an overwhelming majority. There was a widespread belief that the war cabinet system would be abandoned, but when the new government was officially announced on January 10, 1919, it was clear that the war-time organization was to be continued during the peace negotiations.<sup>13</sup> As the year 1919 advanced, opposition to the War Cabinet became more outspoken, reaching a climax on October 23, when the government suffered a severe defeat in the House of Commons on the Alien Restriction Bill. As a result, the War Cabinet was abolished, and the membership of the cabinet was enlarged to eighteen. A few days later (October 29, 1919), Mr. Bonar Law, answering a question for the prime minister in the House of Commons, stated that the reorganized coalition would continue the cabinet secretariat.<sup>14</sup> Thus its services were available in connection with the series of international conferences which began early in 1919, and its staff was drawn upon to provide secretarial services for all of them.

In the early years of its existence the secretariat was accepted practically without comment as a war measure, and doubtless the absence of an organized Opposition saved it from much scrutiny. In fact, it was mentioned in Parliament only a few times. On February 13, 1917, Mr. Law was called upon to assure the House of Commons

<sup>11</sup> *War Cabinet: Report for the Year 1917*, *ibid.*

<sup>12</sup> *War Cabinet: Report for the Year 1918* (Cmd. 325, London, 1919), p. 6.

<sup>13</sup> 112 H. C. Deb. 5 s., p. vii.

<sup>14</sup> *Times*, October 30, 1919; also (November 13, 1919) 121 H. C. Deb. 5 s. 500.

that the secretariat was not authorized to make cabinet minutes available to the press.<sup>15</sup> A few days later it was declared in the Commons that the War Cabinet had a secretariat with a staff of thirty-six. Two members wanted to discuss the matter, but it was out of order.<sup>16</sup> On March 8, 1917, during a debate on supply, several members undertook to criticize the whole organization of the government. The qualifications of the members of the War Cabinet were discussed freely. During the course of the debate the cabinet secretariat was mentioned, and attention was called to the size of its staff and the luxuriousness of its offices. It was a minor point, however, and the supply was passed without change.<sup>17</sup> On June 18, 1917, Mr. Law denied that it was the duty of the secretaries to the cabinet to offer expert military and naval advice.<sup>18</sup> The question in this case was raised by the appointment of four army and navy officers to the secretariat's staff. Without doubt they were expert advisers, but from the first they were employed on the Committee of Imperial Defense.<sup>19</sup> On November 13, 1919, just after the abandonment of the war cabinet system, Mr. Gideon Murray, a coalition Liberal, tried to force Mr. Lloyd George into a statement of the functions of the cabinet secretariat, but was reprimanded by the Speaker.<sup>20</sup>

Aside from such casual comment, the secretariat received no criticism until the summer of 1922, when for a while it occupied considerable space in the press and was the subject of a debate in the House of Commons on June 13.<sup>21</sup> Sir Henry Craik, writing in the *Nineteenth*

<sup>15</sup> *Times*, February 14, 1917; see also (July 4, 1922) 156 H. C. Deb. 5 s. 187.

<sup>16</sup> *Times*, February 20, 1917.

<sup>17</sup> 91 H. C. Deb. 5 s. 602-222.

<sup>18</sup> *Times*, June 19, 1917.

<sup>19</sup> *Estimates for Civil Services* (Sessional Papers, 1923, vol. XVI), p. 24 note.

<sup>20</sup> 121 H. C. Deb. 5 s. 500.

<sup>21</sup> During the first period of its existence the secretariat received the endorsement of two important parliamentary committees. The Machinery of Government Committee, of which Viscount Haldane was chairman, appointed in July, 1917, and reporting in December, 1918, made the following recommendation: "We think there is one feature in the procedure of the War Cabinet which may well assume a permanent form, namely, the appointment of a secretary to the cabinet charged with the duty of collecting and putting into shape its agenda, of providing the information and material necessary for its deliberations, and of drawing up records of the results for communication to the departments concerned." *Ministry of Reconstruction: Report of the Machinery of Government Committee* (Cmd. 9230, London, 1918), p. 6. The Committee on National Expenditure, better known as the Geddes Committee, from the name of its chair-

*Century*, suggested that the office of secretary to the cabinet might develop like the secretaryships of state, for the holders of those offices were originally only recorders and transmitters, but soon became the heads of the most important departments of the government.<sup>22</sup> The apparent reason for the establishment of the cabinet secretariat, said the editor of the *Spectator*, "though it is not a good one, is that Mr. Lloyd George, when he took the conduct of foreign policy practically into his own hands . . . found the secretariat a great convenience. Without it he would never have been able to hold that long series of conferences in various parts of Europe in exactly the dictatorial way in which he handled them."<sup>23</sup> The *Times* found the whole system exemplified by the cabinet secretariat thoroughly vicious, and recommended that the representatives of the nation make a beginning in economy by abolishing it.<sup>24</sup>

The secretariat was the subject of a debate in the House of Commons, lasting about four hours, on June 13, 1922. This was the first time that it had ever undergone a complete discussion on the floor of the House.<sup>25</sup> The occasion was a motion by Sir Donald Maclean in committee of the whole upon supply to reduce by £100 the vote asked for the cabinet secretariat. Both Liberals and Unionists assailed the secretariat, and it was defended by Sir Austen Chamberlain and

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man, Sir Eric Geddes, reporting in 1922, referred to the cabinet secretariat as follows: "We recognize that the amount of work devolving upon this office is still very heavy, and the Treasury, who have carefully reviewed the whole staff from time to time, are satisfied that it is not in excess of what is required. In these circumstances we make no recommendations." *Third Interim Report of the Committee on National Expenditure* (Cmd. 1589, London, 1922), p. 58. The following classification of the staff of the cabinet secretariat, contained in the Geddes report, is interesting as showing its composition when criticism arose: administrative, 11; clerical, 47; typists, 22; messengers, 20; charwomen, 14; total, 114.

<sup>22</sup> "The Cabinet Secretariat," *Nineteenth Century and After*, XCI, pp. 913-923 (June, 1922). The suggestion that the cabinet secretariat might go the way of the secretaries of state is interesting, but can hardly be taken seriously. At any rate, it has since been shown that the secretaries of state were from the first something more than "recorders and transmitters," as Sir Henry Craik thought. See Florence M. Grier Evans, *The Principal Secretary of State* (Manchester, 1923).

<sup>23</sup> *Spectator*, CXXVIII, p. 708 (June 10, 1922).

<sup>24</sup> June 13, 1922.

<sup>25</sup> Sir Donald Maclean (Liberal), 155 H. C. Deb. 5 s. 213; Sir Henry Craik (Coalition Unionist), *ibid.*, 243; Mr. Lloyd George, *ibid.*, 263.

Mr. Lloyd George. The arguments brought forth against it may be summarized as follows: (1) it impedes parliamentary control over the ministry;<sup>26</sup> (2) it tends to exalt the powers of the prime minister;<sup>27</sup> (3) it performs work which ought to be done by ordinary departments—especially the Foreign Office, as in the case of the League of Nations work;<sup>28</sup> (4) it is not necessary in peace time;<sup>29</sup> (5) it is too expensive;<sup>30</sup> (6) it will develop into a new department that will usurp the powers of the ministry;<sup>31</sup> (7) the preparation of agenda is too important a task to entrust to secretaries;<sup>32</sup> (8) evils will result from taking minutes of individual opinions expressed by cabinet members; from allowing access to minutes of cabinet meetings; and from making the minutes a continuous record.<sup>33</sup>

Some of these arguments (referring to the preceding numbers) were answered by the Government spokesmen as follows: (1) The secretariat does not impede Parliament's control over ministers. Does the existence of a staff of civil servants under any minister modify his responsibility?<sup>34</sup> Furthermore, the only instance cited was that of reparations, for which the Chancellor of the Exchequer is clearly responsible.<sup>35</sup> (3) The secretariat does not cause confusion in foreign affairs, for all the cases cited, upon examination, prove to have been the work of other departments, or the product of unavoidable circumstances.<sup>36</sup> As for the League of Nations work, the cabinet secretariat has proved to be the best department for the League to correspond with, for two reasons:<sup>37</sup> first, "the League of Nations intimately concerns the Dominions, and the Dominions prefer to correspond with the Cabinet office,"<sup>38</sup> and, second, the League of Nations

<sup>26</sup> Sir Donald Maclean; Lieut.-Col. Guinness (Coalition Unionist), *ibid.*, 251-254; Sir John Marriott (Coalition Unionist), *ibid.*, 255-263.

<sup>27</sup> Sir Donald Maclean, Lieut.-Col. Guinness.

<sup>28</sup> Sir Donald Maclean; Lord Eustace Percy (Unionist), *ibid.*, 232-239; Sir John Marriott.

<sup>29</sup> Mr. Asquith, *ibid.*, 226-231.

<sup>30</sup> Mr. Isaac Foot (Liberal), *ibid.*, 239-241; Mr. Adamson (Labor), *ibid.*, 255-256.

<sup>31</sup> Sir Henry Craik, *ibid.*, 241-245.

<sup>32</sup> Lord Robert Cecil (Unionist), *ibid.*, 245-251.

<sup>33</sup> Sir Henry Craik, Sir John Marriott.

<sup>34</sup> Sir Austen Chamberlain, *ibid.*, 224.

<sup>35</sup> Mr. Lloyd George, *ibid.*, 271-272.

<sup>36</sup> *Ibid.*, 267-271.

<sup>37</sup> Sir Austen Chamberlain, *ibid.*, 224.

<sup>38</sup> See Edwin Mousley, "The Cabinet Secretariat and Empire Government," *Fortnightly Review*, CXIX, pp. 523-526 (March, 1923). It is recognized that the

is not strictly a Foreign Office concern; it relates to many other departments. (5) The argument of economy was answered by reference to the Geddes report.<sup>39</sup> (8) In regard to the minutes of cabinet meetings, it was stated that absolutely no record of individual opinions was made; that all ministers, but only ministers, had access to the minutes; that a continuous record of cabinet meetings would at least tend to stabilize policy.<sup>40</sup>

Besides attempting to refute the criticisms of the secretariat, the Government speakers advanced certain positive arguments. It was maintained that the cabinet needed such services because of the tremendous increase in business, which is illustrated by the number of cabinet meetings during and after the war, as compared with former years. It was maintained also that the cabinet secretariat was a businesslike development, in line with modern ideas. "No one who has had experience of both systems," said Sir Austen Chamberlain, "would for one moment think of going back to the old unbusinesslike system."<sup>41</sup> A similar opinion was expressed by Mr. Lloyd George.<sup>42</sup> At any rate, the government carried the day. Sir Donald Maclean's motion of censure was lost by a vote of 205 to 111,<sup>43</sup> and the original question was agreed to without division.<sup>44</sup>

Comment in the press upon the debate of June 13, 1922, was not very favorable to the government. "We have seldom heard a less convincing argument," said the *Times*, "for a grave constitutional

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cabinet secretariat performed a real service in effecting continuity in Empire government, and it seemed to the writer that the curtailment of the functions of the secretariat by Mr. Law in the latter part of 1922 would have an undesirable effect on relations with the Dominions.

<sup>39</sup> See note 21 above.

<sup>40</sup> Mr. Lloyd George, 155 H. C. Deb. 5 s. 263-76.

<sup>41</sup> *Ibid.*, 219.

<sup>42</sup> *Ibid.*, 276.

<sup>43</sup> *Ibid.*, 275. The division is analyzed in the *Liberal Magazine* (XXX, p. 470, July, 1922) as follows:

	<i>For</i>	<i>Against</i>
Liberals	19	1
Coalition Liberals	5	58
Unionists	33	140
Labor	52	0
Others	4	7
	<hr/>	<hr/>
Total	113	206

<sup>44</sup> 155 H. C. Deb. 5 s. 287.



departure involving the expenditure of a considerable sum of public money."<sup>45</sup> The *Manchester Guardian* was convinced "that more remained to be revealed than was apparent from the official explanations."<sup>46</sup> The *Spectator* considered the answers made by Mr. Lloyd George very unsatisfactory. "The real reason for its [the secretariat's] continuance," said the *Spectator*, "is that Mr. Lloyd George is in love with bureaucracy."<sup>47</sup> The *Liberal Magazine* was, of course, unconvinced by the Government arguments. Its editor could not reconcile Mr. Lloyd George's remarks to the effect that the cabinet secretariat "is a very important departure," and that "they are a recording department."<sup>48</sup> The editors of both the *Saturday Review* and the *London Nation* could see the secretariat only as a part of an invidious scheme to subvert the English constitution.<sup>49</sup> Of the organs mentioned, the *Times*, the *Spectator*, the *Saturday Review*, and the *Nation* were unequivocal in demanding the total abolition of the secretariat; the *Liberal Magazine* and the *Manchester Guardian* saw good in the new development in cabinet government, but wanted to reduce the secretariat in size, cost, and functions.

An interesting series of letters in the *Times* kept alive the comment upon the secretariat for some time after the debate of June 13, 1922. Lord Gladstone, ten days later, defied "anyone to give from the speeches of Mr. Chamberlain and Mr. Lloyd George a clear, connected account of what the secretariat is and does."<sup>50</sup> The next day the *Times* editorially endorsed Lord Gladstone's finding that the retention of the secretariat was unjustified, and encouraged the discussion that was going on in its columns. A few days later Mr. Geoffrey Drage, who announced himself as a civil servant, stated the case for the retention of the secretariat.<sup>51</sup> His letter is interesting because it states an argument for the secretariat that none of its political champions ever dared to emphasize, namely, that it would make for continuity of policy. Later letters by Mr. Arthur Ponsonby and Mr. J. G. Swift MacNeill continued the argument in opposition.<sup>52</sup>

<sup>45</sup> June 14, 1922.

<sup>46</sup> June 16, 1922. Quoted in Sait and Barrows, *British Politics in Transition* (Yonkers-on-Hudson, 1925), p. 48.

<sup>47</sup> CXXVIII, p. 740 (June 17, 1922).

<sup>48</sup> XXX, pp. 418-420 (June, 1922).

<sup>49</sup> *Saturday Review*, CXXXIII, p. 624 (June 17, 1922); *London Nation*, XXXVII, p. 397 (June 17, 1922).

<sup>50</sup> *Times*, June 23, 1922.

<sup>51</sup> *Ibid.*, June 26, 1922.

<sup>52</sup> *Ibid.*, July 3, 1922; Sept. 26, 1922; Oct. 5, 1922.

It is this series of letters in the *Times* that first directed attention to a distinction that ought to be made between the cabinet secretariat and the prime minister's private secretariat. That the two bodies were confused in the public mind seems evident. Mr. Asquith was accused of a misuse of terms in a political speech made in October, 1922.<sup>53</sup> Sir John Marriott carefully warns his readers against a confusion of the two terms.<sup>54</sup> The report of the war cabinet for 1917 contains the following statement: "In addition to the war cabinet secretariat there was created a small prime minister's secretariat to assist the prime minister in discharge of the heavy responsibilities which fall upon him under the war cabinet system."<sup>55</sup> The second report added that the cabinet secretariat worked in close association with the prime minister's secretariat.<sup>56</sup> By 1922 the personal secretariat had a staff of twenty, at a cost of £9,318.<sup>57</sup> Prime ministers before the war, of course, had a private secretariat; but never, it appears, with a staff of over four, nor at a cost of over £2,000.<sup>58</sup>

In spite of the criticism received in the debate of June 13, 1922, and in the press in the months following, the cabinet secretariat was not modified in any way as long as the coalition remained in power. This sets up a fair presumption that much that had been said about the secretariat contributing to the power of the prime minister was true. Mr. Lloyd George had, indeed, attained a degree of power never enjoyed by any of his predecessors, and there can be no doubt that his success was due in no small measure to the efficient service of the cabinet secretariat headed by the able Sir Maurice Hankey.<sup>59</sup> The secretariat could be justified during the war, and tolerated during the series of international conferences which followed; but by the summer of 1922 it had outlived, in its swollen state, its period of

<sup>53</sup> *Times*, Oct. 12, 1922 (letter).

<sup>54</sup> *English Political Institutions* (3rd ed., Oxford, 1925), p. xxv, and *The Mechanism of the Modern State* (Oxford, 1927), II, p. 85. See also a letter in the *Times*, October 7, 1922.

<sup>55</sup> *War Cabinet: Report for the Year 1917*, p. 3.

<sup>56</sup> *Ibid.*, for 1918, p. 6.

<sup>57</sup> Mr. Baldwin, 164 H. C. Deb. 5 s. 5.

<sup>58</sup> *Ibid.*; see also a letter by Mr. Arthur Ponsonby, *Times*, July 3, 1922.

<sup>59</sup> Sir Maurice Hankey was given a grant of £25,000 in 1919 for his war services as secretary to the Committee of Imperial Defense and the War Cabinet. For Mr. Lloyd George's tribute, see 119 H. C. Deb. 5 s. 419. In 1921 his salary was increased from £2,000 to £3,000. For tributes to his services at that time, see 138 H. C. Deb. 5 s. 1903 *seq.*

usefulness. By that time it had come to be the symbol of that dictatorship to which the nation had enthusiastically submitted during the war, but which was wholly odious when peace had been concluded. Its retention in the face of criticism can be attributed only to Mr. Lloyd George's tenacity in holding on to power, and his reluctance to surrender any contributory source.

In October, 1922, however, the coalition was brought to a sudden end by the secession of the Conservatives under the leadership of Mr. Law and Mr. Baldwin. The new prime minister, Mr. Law, immediately announced a return to normal party government, and his modest idea of his office prompted a speedy change in the cabinet secretariat. Speaking on October 22, 1922, he announced that thenceforth the secretariat would be subordinated to the Treasury, the traditional central department of government. The League of Nations correspondence was to be transferred to the Foreign Office, and he promised that if there should be any international conference during his term of office the secretarial work would be handled, not by the cabinet secretariat, but by the Foreign Office. "The first thing which I did on assuming this office," said Mr. Law, speaking in London on November 2, "was to make a change in the cabinet secretariat."<sup>60</sup>

The secretariat employed a total of 102 persons when Mr. Law's government took office. By the end of November, 1922, the staff had been decreased to sixty-three, which, as was stated in the House of Commons, meant an annual saving of £20,000. On May 14, 1923, the Chancellor of the Exchequer (Mr. Baldwin) stated that the organization had a total staff of thirty-eight, at an annual cost of £15,750.<sup>61</sup> At the same time, he announced that the prime minister's secretariat had been reduced in the last quarter of 1922 to thirteen, costing £6,000, and in 1923 to eleven, costing £5,283. Since that date the cabinet secretariat has undergone little change in size or expense.<sup>62</sup>

The cabinet secretariat must now be regarded as a permanent part of the constitutional machinery. In the curtailed form in which it has existed since the fall of 1922, it is less open to criticism and offers smaller opportunity for manipulation by an ambitious prime minister. Its subordination to the Treasury was an exceedingly wise concession to tradition. In the Treasury its usefulness cannot be

<sup>60</sup> *Times*, November 3, 1922.

<sup>61</sup> 164 H. C. Deb. 5 s. 5.

<sup>62</sup> *Civil Service Estimates* (Sessional Papers, 1923, vol. XVI), p. 24; *ibid.*, 1924, vol. XVI, p. 18; *ibid.*, 1924-25, vol. XIX, p. 24.

lessened, and there it fits into the recognized administrative machinery of the country. Though one of the most disliked of Mr. Lloyd George's administrative reforms, the cabinet secretariat may prove to be the most permanent and the most useful.

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**The Japanese General Election of 1928.** On February 20, the long expected parliamentary election was held.<sup>1</sup> As the first expression of national opinion under the manhood suffrage law, its result was awaited with unusual interest. Dissolution of the House of Representatives had been demanded by the liberal press ever since the passage of the election law of 1925, but the old parties had been reluctant to appeal to the electorate. In the fifty-second session of the Diet, the Kenseikai cabinet reaped a harvest of unpopularity by an arrangement with the Seiyukai and Seiyuhonto which prevented a no-confidence vote. When the Seiyukai came into office in April, 1927, it was apparent that any ministry which postponed dissolution would forfeit popular esteem; and in any case the four-year term automatically required a general election before May, 1928. The Kenseikai and the Seiyuhonto made preparation for the coming election by amalgamating into a united opposition under the name of the Rikken Minseito. The Seiyukai prepared by dismissing the governors in twenty-four of the forty-seven prefectures and filling their places with adherents who would promote the party's interests at the polls.

The dissolution came at the opening of the 54th session of the Diet. The cabinet lacked a majority, and the Opposition planned to introduce a vote of no-confidence criticising the Government for a harsh foreign policy that injured Japanese interests in China and created distrust of Japan in Europe, and for an extravagant financial policy that failed to improve the economic depression attendant upon the bank failures of last spring.<sup>2</sup> On January 21, Premier Tanaka made

<sup>1</sup> Part of the material used in this note was obtained through the courtesy of Mr. Teijiro Tamura, the Japanese consul at Chicago. Sources from the *Kwampo* and Japanese newspapers were translated by Mr. Sterling Takeuchi and Mr. Michinari Fujita.

<sup>2</sup> Compare the speech by Yuko Hamaguchi, the leader of the Minseito, before a meeting of his party. *Tokyo Asahi*, Jan. 21, 1928, p. 1; *Japan Chronicle*, Jan. 26, 1928, p. 102. The party strength in the lower house was reported as follows: Minseito, 220; Seiyukai, 188; Shinsei Club, 25; Jitsugyo Doshikai, 8;

the usual opening address for the Government, followed by a second statement in his capacity as foreign minister, and a third statement by Chuza Mitsuchi, the finance minister.<sup>3</sup> Thereupon, without permitting the Minseito to introduce their vote of no-confidence or to debate it, the secretary of the cabinet hurried to the rostrum carrying with great respect the emperor's rescript wrapped in blue furoshiki. The president of the House bowed, unrolled the scroll, and read the decree dissolving the lower chamber. The Seiyukai thus tricked the Minseito out of a parliamentary victory, but laid themselves open to the charge of deliberately evading a fair debate.<sup>4</sup>

Due, perhaps, to the appearance of the two-year old proletarian parties, each with elaborate programs, the platforms of the major parties were unusually distinct, and for once disproved the quip of Ozaki Yukio that the only difference between the two parties is that one is a robber and the other a thief. The Seiyukai platform was characteristic of a party whose strength lay in the country districts, while the Minseito made its appeal largely to urban populations. Among the specific promises of the Seiyukai were proposals for decentralization by the extension of the powers of the prefectural governors and assemblies, transfer of the land taxes to the local governments, development of agriculture by subsidies to tenant farmers, and promotion of manufactures by grants to promising industries.<sup>5</sup> The latter policy, known as the "industrialization program," was branded by the Minseito as dangerous inflation. The Minseito platform called for improvement in the means for coöperation between capital and labor, support of all public education by the national treasury, retrenchment of finances, removal of the gold embargo, and government regulation of public utilities. As opposed to the two major parties, the Jitsugyo Doshikai, or Business-men's party, demanded complete abandonment of governmental interference in industry.<sup>6</sup> All the bourgeois parties not only issued pamphlets but ran paid advertisements in the press expounding their platforms.<sup>7</sup>

Independents, 18; vacant seats, 5; total, 464. *Osaka Mainichi*, English edition, Jan. 20, 1928, p. 1.

<sup>3</sup> *Kwampo gogai* (Imperial Gazette, extra edition), Jan. 22, 1928, pp. 10-14. Cf. *Tokyo Asahi*, Jan. 22, 1928, p. 1; *Japan Chronicle*, Jan. 26, 1928, p. 99.

<sup>4</sup> The independent *Tokyo Nichi Nichi Shimbun*, on Jan. 22, declared: "The procedure was distinctly unparliamentary and in contravention of fair play."

<sup>5</sup> *Jiji Shimpō*, Jan. 22, 1928, p. 3.

<sup>6</sup> *Jiji Shimpō*, Jan. 22, 1928, p. 3; *Japan Advertiser*, Jan. 23, 1928, p. 1.

<sup>7</sup> Cf. *Tokyo Asahi*, Feb. 18, 1928, p. 2.

The proletarian parties profited by the extensive campaign of education which Professor Abe and his associates inaugurated over two years ago. All of their platforms condemned the old parties as political shams and proposed various social and political reforms, including woman suffrage, abolition of all laws restricting labor unions, unemployment relief, minimum wage laws, employers' liability, protection of tenant farmers, and nationalization of certain industries.<sup>8</sup> The best organized of these parties is the Shakai Minshūto, or Social Democratic party, led by Isao Abe, the well known sociologist of Waseda University, and Suzuki Bunji, president of the Japanese Federation of Labor. This party draws largely from the intelligentsia and represents the right wing of the radical group. Closely allied to the Social Democrats is the Nippon Nominto, or Japanese Farmers' party. A middle-course radical party is the Nippon Ronoto, or Japanese Labor-Farmer party, while the extreme left is occupied by the Rodo Nominto, or Labor-Farmer party, which is avowedly communistic.<sup>9</sup>

One of the significant features of the election was the agreement among the proletarian parties to coöperate in placing candidates in the field. In Japan, election districts send from three to five members to the House, and voters may write the same number of names on their ballots. In all, 967 candidates offered themselves for the 466 seats. The Seiyukai and the Minseitō had 348 candidates each, the independents 140, and the proletarian parties 57.<sup>10</sup> In the prefectural elections in September, 1927, the small showing of the proletarian parties had been largely attributed to their lack of coöperation.<sup>11</sup> Accordingly, even before dissolution, the proletarian leaders

<sup>8</sup> Cf. *Tokyo Asahi*, Jan. 22, 1928, p. 2. For the past two years, the Shakai Minshūto have published a series of pamphlets selling for ten sen (five cents) apiece, discussing in dignified language the political and social problems of Japan and the reforms proposed by the Social Democrats. The *Shakai Minshūto Koryō Kaisessu*, from the pen of Professor Abe, is the best known of these pamphlets.

<sup>9</sup> For the platforms of these parties see *Tokyo Asahi*, Jan. 22 and 24, 1928, p. 2; *Japan Advertiser*, Jan. 23, 1928, p. 3. The party name, Nippon or Nihon Nominto, is commonly shortened to Nichinoto; Nihon Ronoto, to Nichiroto; and Rodo Nominto, to Ronoto.

<sup>10</sup> The Jitsugyō Doshikai supported 30 candidates, and the Kakushin Club 17. Among the proletarian parties, the Shakai Minshūto offered 18; the Nippon Nominto, 11; the Nippon Ronoto, 14; and the Rodo Nominto, 12. *Jiji Shimpō*, Feb. 14, 1928, p. 2; *Osaka Mainichi*, Feb. 16, 1928, p. 1.

<sup>11</sup> In the elections for the prefectural assemblies in September, 1927, the pro-

reached an agreement in the matter of keeping labor candidates from running against each other.<sup>12</sup> Among the bourgeois parties, the Minseito showed better finesse than the Seiyukai in arranging its candidates so as to catch the greatest share of the independent vote while not dividing the party's vote by supporting too many candidates. This fact partly accounts for the close run that the Minseito gave the Seiyukai despite the fact that the latter had all the advantage that comes from the control of the Home Department at such a time.

Another outstanding feature of the election was the heavy hand which the election law lays upon political activity and which under the administration of an intransigent home minister contributes to the spirit of suspicion and distrust. When granting manhood suffrage in 1925, the Diet, as if moved by a reaction against popular control, enacted one of the most complicated codes regarding corrupt practices to be found the world over. Besides the usual severe penalties imposed for false registration, bribery, and fraudulent candidacy, candidates must deposit two thousand yen which is forfeited if they do not secure a considerable vote; house-to-house canvassing and solicitation by telephone are prohibited; expenditures are limited to about 12,000 yen per candidate; no candidate may employ more than fifty paid workers, entertain voters at dinner or the theatre, hire carriages or automobiles to carry voters to the polls, or make exaggerated statements concerning himself in posters or newspaper advertisements.<sup>13</sup> Even posters in more than two colors may be prohibited. With such minute regulations, it is not surprising that in the present election it was charged that spies on both sides were employed to report all infractions of the corrupt practices law.<sup>14</sup>

Under the electoral law both the Home and Justice departments exercise considerable influence over elections, the former by its control of the prefectural governors and the police, and the latter through

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letarian parties won 28 out of 1,485 seats, and polled 255,500 votes out of 6,296,114 votes cast. *Tokyo Asahi*, Oct. 18, 1927, p. 2; *Japan Advertiser*, Oct. 19, 1927, p. 3.

<sup>12</sup> These proletarian party agreements did not hold in every case, notably in the fifth constituency of Tokyo. Cf. *Japan Advertiser*, Jan. 31, 1928, p. 1.

<sup>13</sup> *Genko Horei Shuran* (1925), vol. I, bk. ii, sec. 3.

<sup>14</sup> *Osaka Mainichi*, Jan. 31, 1928, p. 1; *Tokyo Nichi Nichi Shimbun*, Feb. 1, 1928, p. 2; *Japan Advertiser*, Jan. 29, 1928, p. 1; *Japan Chronicle*, Feb. 2, 1928, p. 137.

its authority to prosecute election frauds. The campaign of 1928 had not progressed far before all opposition parties had cause for complaint against the subversive policy of Dr. Kisaburo Suzuki, the forceful official who heads the Home Department. The conference of the prefectural governors summoned to Tokyo on January 24 was branded as a plot to instruct local officers in the ways of injuring the Opposition at the polls.<sup>15</sup> The Minseito headquarters in Tokyo were raided and the Government seized two hundred thousand pamphlets discussing the Siberian army funds which General Tanaka is charged with having misappropriated. Police interference became the order of the day, and many proletarian meetings were broken up by policemen with rattling sabres. It was reported that the Suzuki faction in the cabinet wished to carry interference so far as to oust Yoshizo Hara, the minister of justice, for refusing to harass Opposition candidates with unwarranted prosecutions.<sup>16</sup> The newspapers of Tokyo joined in a protest to the Government, while the Rodo Nominto filed a suit in court against the home minister charging him with systematic suppression of party meetings.<sup>17</sup>

Another conspicuous feature of the campaign was the strenuous effort of the Government to bring out the indifferent voter. The prefectural elections in the autumn, held in 39 of the 47 prefectures, had drawn a comparatively light vote. According to the report of the police bureau of the Home Department, 2,318,247 qualified voters out of a total of 9,152,638, or 26.5 per cent, failed to go to the polls.<sup>18</sup> This situation raised discussion as to the advisability of adopting compulsory voting, and led the Government to make valiant efforts to bring out the stay-at-home voter for the parliamentary election. Among other devices, the Home Department issued a quantity of illustrated posters explaining the election law and depicting the prosperity that would surely follow intelligent voting.<sup>19</sup> The vote on February 20 indicated a wide public interest in the election. Of the 12,534,360 qualified voters, 81 per cent went to the polls.<sup>20</sup> This

<sup>15</sup> *Jiji Shimpō*, Jan. 26, 1928, p. 2; *Tokyo Asahi*, Jan. 25, 1928, p. 2; *Tokyo Hochi Shimbun*, Jan. 26, 1928, p. 2.

<sup>16</sup> *Japan Advertiser*, Feb. 17, 1928, p. 1.

<sup>17</sup> *Jiji Shimpō*, Feb. 12, 1928, p. 3; *Tokyo Asahi*, Feb. 16, 1928, p. 1.

<sup>18</sup> *Tokyo Asahi*, Oct. 18, 1927, p. 2. *Japan Advertiser*, Oct. 19, 1927, p. 1.

<sup>19</sup> Copies of these posters are found in the *Tokyo Asahi*, Feb. 8, 1928, p. 2, and *Japan Advertiser*, Feb. 8, 1928, p. 3.

<sup>20</sup> Cablegram, dated Feb. 24, from the intelligence bureau of the Foreign Office to the Japanese Embassy in Washington, D. C.



figure does not compare favorably with previous elections under the restricted suffrage. In the election of 1908, nearly 86 per cent of the 1,582,000 qualified electors cast their ballots, while in the election of 1924, which overthrew the Kiyoura cabinet, over 91 per cent of the voters participated.<sup>21</sup> Nevertheless, the Japanese percentage of 1928 surpasses the figures for recent elections in Great Britain and America. The British general elections of 1922, 1923, and 1924 brought out respectively 75.4, 74.1, and 80.6 per cent of the voters; while the last presidential election in the United States resulted in a vote of only 51.66 per cent of the qualified electorate.<sup>22</sup>

As an expression of popular opinion, the election struck an awkward division between the two major parties. The Seiyukai secured only 221 seats, whereas 234 are necessary for a majority of the House. The Minseito won 214 seats, the Jitsugyo Doshikai only four, and the Kakushin Club only three.<sup>23</sup> The proletarian parties captured eight seats, while the independent members have sixteen.<sup>24</sup> The

<sup>21</sup> *Japan Year Book, 1927* (ed. Y. Takenobu), p. 90.

<sup>22</sup> *Constitutional Year Book* (London, 1927), p. 272. In the United States, under the census of 1920, there were 56,371,027 citizens above twenty-one years of age, and in the election of 1924 only 29,022,261 of them voted. Cf. *U. S. Statistical Abstract, 1926*, pp. 18, 156.

<sup>23</sup> *Jiji Shimpō*, Feb. 25, 1928, p. 2. These figures are the same as announced to the Emperor on February 24 by Premier Tanaka. The Minseito, however, claimed 217 seats, and conceded an equal number to the Seiyukai. *Tokyo Asahi*, Feb. 25, 1928, p. 2. The discrepancy is due to the fact that each party counts upon the support of certain independent members. On April 4, statements filed with the secretariat of the House of Representatives indicated that the Seiyukai held 217 seats; the Minseito, 216; the Jitsugyo Doshikai, 4; the Kakushin Club, 3; the proletarian parties, 8; independents, 17; and one vacancy; total 466. *Japanese American News* (San Francisco), April 4, 1928, p. 1. An exact analysis of party strength is not possible until the Diet meets. According to the announcement of the Home Department the popular vote was as follows: Seiyukai, 4,274,858, and 237,851 for affiliated independents, making 45.7 per cent of the total; Minseito, 4,201,219, and 74,748 for affiliated independents, or 43.4 per cent; Jitsugyo Doshikai, 163,333, or 1.6 per cent; Kakushin Club, 81,336, or 0.8 per cent; Shakai Minshuto, 120,039, or 1.2 per cent; Nippon Nominto, 36,491, or 0.4 per cent; Nippon Ronoto, 93,400, or 0.9 per cent; Rodo Nominto, 188,141, or 1.9 per cent; Chiho Musanto, a local proletarian party, 46,766, or 0.5 per cent; independents, 353,565, or 3.6 per cent. Total vote, 9,862,744. *Jiji Shimpō*, Feb. 25, 1928, p. 3.

<sup>24</sup> The proletarian seats are held as follows: Shakai Minshūto, 4; Nippon Ronoto, 1; Rodo Nominto, 2; and Chiho Musanto, a local proletarian party, 1. Both Professor Abe and Suzuki Bunji won seats, the one in Tokyo, the other in Osaka. Professor Ikuo Oyama, leader of the Rodo Nominto, was defeated in Kagawa.

Government expected, of course, to win sufficient votes from the independents to ensure a majority when the Diet met on April 20. The party in power has divers means of securing this sort of support. Nevertheless, it was obvious that even if the entire independent membership were captured, the majority would be slim, and would tend to wear down. The Government was not successful in concealing its chagrin at the result of the election, but the burst of indignation following certain indiscreet remarks of Dr. Suzuki concerning the lack of loyalty to the Emperor in democratic government warned the Tanaka cabinet against any resort to super-government in case the ministry's majority should disappear.<sup>25</sup>

Since the major parties are so nearly equal, the independents have opportunity for holding a nice balance between the two giants. This event depends upon the ability of Ozaki Yukio and Kizo Hashimoto to organize a new group including the remnants of the Kakushinto. At the date of writing (March 15) this possibility appears remote. The proletarian parties are determined never to merge their identity in any parliamentary group. Early in March the leaders of these parties held a series of meetings in Tokyo for the purpose of forming a Joint Committee for Diet Policies which would enable the four radical parties to act as a unit in the House. But complete agreement has not proved possible.<sup>26</sup> Thus, in more respects than one the influence of the proletarian parties is now small. The election showed that the middle-class have less confidence in the new parties than in the old, and that the farm and city workers have not been awakened to class consciousness. Nevertheless it is conceded that the proletarian parties made a good showing in the election, and that their program of political education will appeal to a widening circle of voters.

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**Minority Governments in Sweden.** The outstanding aspect of the Swedish parliamentary system in recent years has been a series of minority governments. Six ministries since 1920 have been able to muster only a minority support in the Riksdag.<sup>1</sup> This inability of any

<sup>25</sup> Compare *Tokyo Asahi*, Feb. 20, 1928, p. 3; also editorials in the vernacular press quoted in the *Japan Advertiser*, Feb. 22 and 23, 1928.

<sup>26</sup> *Tokyo Asahi*, Mar. 10, 1928, p. 2; *Fiji Shimpō*, Mar. 13 and 15, 1928, p. 2.

<sup>1</sup> *Kring regeringskrisen*, *Svensk Tidskrift* (Stockholm), 1926, vol. XVI pp. 279 ff.

party to obtain a majority may be attributed in part to the fact that six parties, four major and two minor, are represented. A brief review of party history may assist in understanding the present situation.

The parliamentary reform of 1866 which abolished the four estates of the old Riksdag and established a two-chamber parliament substituted parties for classes. The organization of the two houses resulted in Conservative control of the first chamber and Agrarian (Lantmannapartiets) domination of the second.<sup>2</sup> The practice of voting jointly on bills rejected by one house saved the situation from becoming a deadlock. In 1888 the issue of protection temporarily split the Agrarian party, but it reunited in 1895 on a moderate protectionist platform.<sup>3</sup> This party represented the rural communities of the kingdom and was by nature conservative. As the cities grew in population, a party more representative of the middle class in the urban communities, the Liberals, gained strength. In 1903 the Liberals captured 102 seats in the second chamber; and, in opposition to the Conservatives, they organized their first ministry under Staaff in 1905.<sup>4</sup> The increasing industrialization of Sweden resulted in the emergence of a fourth party, the Social Democrats, composed largely of the laboring classes. Hjalmar Branting, editor of the party's official organ, *Socialdemokraten*, was elected to the Riksdag in 1896; but for a number of years the Social Democrats controlled only a few seats. The franchise reforms of 1911 and 1921 resulted in great accessions of strength, and since 1919 this party has been the strongest single group in both houses. It now lacks only twelve of having a majority in the lower house, thirty-five of having a majority in both houses. Its adherents hope to close this gap at the elections of next autumn.

With the reform of the electoral franchise in 1911, the Conservatives, or moderates, who up to that time had dominated the first chamber, fearing that they might lose their position, succeeded in introducing proportional representation and thus encouraging and protecting minority groups. They lost all chance of control of the second chamber in the elections of 1911, but kept a majority in the first until the elections of 1919. Since that time the membership of the upper house has been divided almost equally among the Moderates, the Liberals, and the Social Democrats.

<sup>2</sup> S. J. Boëthius, *Oskar II, Sveriges historia till våra dagar* (Stockholm, 1925) vol. XIII, p. 9.

<sup>3</sup> *Ibid.*, pp. 126, 165.

<sup>4</sup> *Ibid.*, p. 240.

During the early history of the Social Democratic party in the Riksdag it was closely allied with the Liberals. In 1917 the Edén ministry was formed in pursuance of a coalition between the Liberals and Social Democrats, although a few left wing socialists refused to join and constituted the Left Socialist party. The radicals again split in 1923 on the question of communism, five members in the lower and one in the upper house withdrawing to form the Communist party on the extreme left. The remaining members of the party returned to the Social Democratic fold.

The old Liberal party, the champion of the extension of the franchise, has also divided into factions. Originally the party received its inspiration and obtained its principal support from the more liberal of the intellectual classes. It was symbolized by the students' forum at Upsala, the *Verdandi*, founded in the eighties. Staaff, the great Liberal leader, who had himself been a member of the *Verdandi*, however, in 1913, appealed to the lower middle class, the "cottage" people, to the free church, and to the prohibition elements.<sup>5</sup> These new forces entirely swamped the intelligentsia. In the division of the old Liberal party in 1923 over the prohibition question, the larger group formed the People's party (*Folkfrisinnade*) and the intellectuals became the New Liberals.

Another obstacle in the way of the formation of a majority government is the reluctance on the part of the major parties since 1920 to form a coalition. Formerly it was the practice that only the prime minister represented the party in power, the other ministers being chosen from the various parties on the basis of executive ability. This was possible since legislation was molded chiefly by the regular, and occasional special, committees chosen jointly by the two chambers.<sup>6</sup> Of late, the British cabinet system has, however, exercised considerable influence upon Swedish parliamentary practice. An attempt was made in 1917 by the Liberals and the Social Democrats to establish a party ministry, and a coalition cabinet supported by a majority of the Riksdag was formed, which lasted for three years, preceding the era of minority ministries.

It is to be observed also that the normal system of cabinet government, in which the ministry is responsible only to the more popular chamber of the legislative body, does not obtain in Sweden. During

<sup>5</sup> *Kring regeringskrisen*, op. cit., p. 287.

<sup>6</sup> Gustav A. Aldén, *Svensk statskunskap, Medborgarens bok* (Stockholm, 1924), pp. 61-63.

the period in which the Moderates controlled the upper chamber, there seemed to be some possibility of establishing the principle of the cabinet's responsibility to the lower chamber alone. An attempt by the Liberal prime minister, Staaff, in 1906, to recognize his responsibility only to the lower house proved, however, abortive;<sup>7</sup> and with the new party alignments resulting from the extension of the franchise, it is now definitely established that both houses are equal in their relation to the ministry. This obviously complicates the problem of securing a majority government.

Flushed with their victory at the polls in 1919, the Social Democrats undertook to form a strictly party ministry of their own, though they did not control an actual majority in the Riksdag. The first Branting ministry was organized in June, 1920, and appealed to the country for support. This government remained in office for only six months, during which time it initiated several investigations of social and economic problems. Before retiring it sought the alliance of the Liberals, but was refused. There followed an interlude when the De Geer-Sydow ministry of government officials attempted, during the economic crisis of 1920-21, to stabilize the budget. The elections of 1921 again assured the Social Democrats of their political strength, and the second Branting ministry was formed. The government was faced with a tremendous unemployment problem in 1922-23. It submitted a bill providing for the extension of doles to workmen who had been unemployed for six months prior to the calling of a strike by their union. This proposal was severely criticised by the finance committee of the Riksdag, and was finally defeated in the first chamber, the opposition being led by C. G. Ekman, the present prime minister.<sup>8</sup> A crisis resulted in which the ministry was forced to resign.

The fourth minority ministry was formed from the moderate party, which numerically stood second to the Social Democrats, and was thus the strongest of the opposition parties. The new prime minister, Trygger, announced the solution of the problem of national defense as the chief plank in the ministry's platform. The government bill on this subject was, however, attacked by all of the other groups in the Riksdag, even by the Agrarians (now called Bondeförbundet), whose general attitude was distinctly conservative except when their old prejudice against a long term of compulsory military training was

<sup>7</sup> Boëthius, *op. cit.*, pp. 249-50.

<sup>8</sup> Karl Hildebrand, *Gustav V., Sveriges historia till våra dagar* (Stockholm, 1926), vol. XIV, pp. 525-26.

revived. Nothing was accomplished toward a settlement of this question during the 1924 session, and the election in the fall of that year brought no material alteration in party alignments. Recognizing its inability to secure a majority on the defense bill, the ministry resigned. The Agrarians, on their part, realizing their inability to muster a majority in the Riksdag, refused to undertake the formation of a ministry, and it was left to the Social Democrats again to assume control of the government. They had, at this time, 104 members in the lower house.

The third Branting (Social Democratic) ministry was formed in October, 1924. In the spring of 1925, the party suffered a great loss in the death of its two leaders, Branting and Thorssén. Sandler succeeded to the premiership, and with the support of Ekman of the People's party, and of the Liberals, in the committees and on the floor of the Riksdag, remained in power until June, 1926.<sup>9</sup> The government measure on national defense was passed, with certain amendments offered by the People's party. The political situation was peculiar. Ekman, the leader of the People's party, was recognized as the power behind the throne with respect to everything which the Social Democrats attempted. He was willing to reduce the length of military service to satisfy the pacifist element among the Swedish dissenters who constituted the nucleus of his party, but he did not favor the social insurance program nor the permanent eight-hour day which the Social Democrats sought to translate into law. It was apparent that Ekman could at any time put the Social Democrats out of power. This actually occurred, rather unexpectedly, in June, 1926, when he withdrew his support and forced the resignation of the ministry over the "Stripa question," involving the legality of a strike at the Stripa mine. The commission on unemployment had held that the strike was illegal and had directed men out of work to seek employment at the mine. The government overruled this decision, thereby reflecting the usual sensitiveness of the Social Democratic party toward all labor disputes. This action was severely criticized in the third division of the finance committee of the Riksdag, of which Ekman was chairman, and this criticism was incorporated in the report of the whole committee.<sup>10</sup> A heated all-day debate on the question followed. The New Liberals, through their leader, Eliel Löfgren, attempted to

<sup>9</sup> *Herr Ekman vid makten, Svensk Tidskrift*, 1927, vol. XVII, pp. 65 ff.

<sup>10</sup> *Kring regeringskrisen*, *op. cit.*, pp. 285 ff; Gustav Möller, *Ett fall och en uppståndelse, Tiden* (Social Democratic, Stockholm, 1926), pp. 193-206.

heal the breach between Ekman and the Social Democrats, but did not succeed. When a vote was finally taken, most of the delegates of the People's party voted against the ministry, which thereupon resigned.

The Moderates refused to undertake the formation of a ministry, since they lacked a majority, and Ekman, who had been responsible for overthrowing the Sandler government, now accepted the call to form a cabinet. He is the first manual laborer to head a Swedish government. The leader of the People's party proposed an alliance with the Agrarians, but was rebuffed. The New Liberals were willing, however, to forget their differences with the People's party of 1923 and entered a coalition. The leader of the New Liberals, Löfgren, became the foreign minister in the new cabinet. The present ministry, a coalition of the "middle class left," as defined by its leader,<sup>11</sup> has thus the support of both wings of the old Liberal party. It controls, however, only 65 of the 380 members in the Riksdag, its strength being equally divided between the two chambers. Of the 150 delegates in the first chamber, the reunited Liberals have only 32; while in the second chamber they number only 33, of whom four are New Liberals and 28 adherents of the People's party.<sup>12</sup> It was believed in June, 1926, that, controlling such a small minority of the Riksdag, this ministry could survive only a short time, yet it has weathered the 1927 session of the Riksdag and will probably survive that of 1928. The elections for county councils in the fall of 1926 had only an indirect bearing on national politics, but as a barometer of party feeling in the country they indicated no enthusiasm for the new ministry and left the Social Democrats still in the position of the strongest single group.<sup>13</sup>

This Left Center coalition offered no definite program. The prohibition question was allowed to rest for the time being. The weakness of the government is indicated by the treatment given its measures on school reform and reduction of communal taxation in the 1927 Riksdag. Both bills were drastically altered in the Riksdag committees, the first through the efforts of the Moderates, and the second by the Agrarians;<sup>14</sup> and the government made no serious stand against

<sup>11</sup> *Herr Ekman vid makten*, op. cit., p. 67.

<sup>12</sup> *Statistisk årsbok för Sverige*, 1927 (Statistiska Centralbyrån, Stockholm), Tab. 264, pp. 316-17; Tab. 266, pp. 318-19.

<sup>13</sup> Viking Källström, *Kring höstens val*, *Svensk Tidskrift*, 1926, vol. XVI, pp. 499 ff.

<sup>14</sup> *Ministären Ekman inför riksdagen*, *Svensk Tidskrift*, 1927, vol. XVII pp. 355 ff.

the modifications. The ministry has, indeed, been frequently divided against itself, even in parliamentary debate. The party press severely criticized the solution of the school question, for which the government was bound to accept responsibility, and a large portion of the free church supporters were certainly disappointed with the result.

The Ekman ministry seems satisfied to administer the government and leave legislation to the Riksdag committees, a system more in accord with the American scheme of separated powers than the English type of ministerial responsibility. Its strength lies in the support which it commands among the middle classes, in its ability as a party of the center to draw support from both right and left, in its willingness to abdicate any position of leadership with regard to a legislative program, and chiefly in the strategic position which it occupies between the two larger parties, the Moderates and the Social Democrats, which are irreconcilably opposed to each other. To this may be added the reluctance of these two larger parties at the present to attempt again a minority ministry, at least until the outcome of the fall elections of 1928 for the second chamber, because of the futility of attempting to carry their programs through the Riksdag. Instability has been generally characteristic of minority governments, six such governments having risen in Sweden in seven years. The Ekman ministry, however, has baffled observers by remaining in power for so long a time.

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**Norwegian Elections of 1927 and the Labor Government.** The Labor party of Norway, organized in January, 1927, as a result of a fusion of the Social Democrats with the former Labor party, made sweeping gains in the elections to the Storting in October last and established itself as the strongest party in the country. Gains were made also by the conservative Agrarian, or Farmer's, party; while the old Conservative party suffered heavy losses; and, in proportion to its strength, the losses of the Communists were even greater. The Radical, or Left, party, which has steadily lost ground since the war, experienced a further decline.



The following tables show the votes polled by the leading parties in the elections of 1927<sup>1</sup> and 1924,<sup>2</sup> and the number of their representatives in the Storting after these elections:

<i>Party</i>	Votes Polled		<i>Gain</i>	<i>Loss</i>
	1927	1924		
Labor	368,100	265,310 <sup>3</sup>	102,790	—
Conservatives (Right and Liberals)	254,910	316,846	—	61,936
Radicals (Left)	172,886	182,557	—	9,671
Agrarian, or Farmers', party	148,874	131,706	17,168	—
Communists	40,061	59,401	—	19,340
Radical People's party	13,413	17,144	—	3,731

<i>Party</i>	Representatives in the Storting		<i>Gain</i>	<i>Loss</i>
	1927	1924		
Labor	59	32 <sup>3</sup>	27	—
Conservatives	31	54	—	23
Radicals	30	34	—	4
Agrarians	26	22	4	—
Communists	3	6	—	3
Radical People's party	1	2	—	1

It will thus be seen that the non-socialist parties still have a considerable majority both in the country and in the Storting (total votes, 590,083 as against 408,161, and in the Storting, 88 as against 62). The gain made by the Labor party is nevertheless significant. Among the reasons assigned for the victory, besides that afforded by the fusion of two formerly competing parties, Social Democrats and Labor, we find the dissatisfaction with the Conservative Lykke ministry, caused by (a) its financial policy in reducing the salaries of state employees and also the amount spent for relief work for the unemployed, while appropriating money for the stabilization of the exchange and the aid of banks; (b) the government's stand on the prohibition question; and (c) the heavy taxes.

The rapid rise of the exchange has complicated, and in many respects retarded, the improvement of the economic condition of Norway. The export trade has suffered, and costly labor conflicts have been the direct results of the lowering of wages to meet the situation

<sup>1</sup> Figures for the 1927 election are based on information supplied by the press bureau of the Norwegian Foreign Office.

<sup>2</sup> Figures for the 1924 and earlier elections are taken from *Statistisk Aarbok for Kongeriket Norge*, 1926 og 1927 (Oslo, 1927), 161.

<sup>3</sup> This total represents the combined vote of the Social Democratic and old Labor parties.

arising from the recovery of the krone. The compulsory arbitration law sponsored by the Conservative government was sharply criticized by labor, and the number of unemployed was high during the last summer. It is, indeed, significant that both of the two parties that gained in the elections advocated a reduction of debt in proportion to the increased value of the currency.

Furthermore, Norwegian politics has shown in recent years a tendency to change rapidly. The Communist party polled 192,497 votes in 1921, but its vote fell to 59,327 in 1924; while the old Social Democratic party experienced a decline from 209,560 votes in 1918, when it was the strongest party in the country, to 83,572 in 1921. On the other hand, the vote of the Agrarian party has risen from 30,925 in 1918 to 148,874 in 1927. The fluctuations in the votes of the socialist parties from 1921 to 1924 were in part due to their affiliations with Moscow; and the liberation from bolshevik control was, no doubt, an important factor in the recent victory of the Labor party.

The new Storting met on January 11 last, and the Conservative Lykke ministry shortly afterwards resigned. The outgoing premier advised the king to ask Mr. Melbye, leader of the Agrarian party, to form a coalition ministry supported by the non-socialistic groups. But efforts in that direction failed because the Radical party refused to follow a leader whose party represented a class, not the nation as a whole. The king then turned to the Labor party, which declared itself willing to accept office. Consequently, on January 28 Norway acquired its first socialist ministry. The premier, Mr. Hornsrud, was a wealthy farmer of moderate views. But the left wing of the Labor party obtained a majority in the government, and its best known, and perhaps ablest, member was the minister of foreign affairs, Dr. Edward Bull, professor of history in the University of Oslo, and for years an enthusiastic admirer of the bolshevik experiments. The ministry was commonly described as "pink"; and the apprehensions aroused by the inclusion of so many extremists among its members were strengthened when the trades union congress, meeting in Oslo near the time when the university was formed, displayed strong leanings towards Moscow.

The government tried to allay popular fear by accepting, in all essentials, a budget prepared by its Conservative predecessor and disclaiming any intention to strike immediately at the existing economic order. Nevertheless the newspapers reported a brisk de-

mand for foreign securities, and the Norwegian exchange showed signs of weakening. Capital seemed ready to flee the country.

The program announced by the ministry to the Storting included cancelling of all military training for the present year, revision of the system of taxation, increased doles for the unemployed, and repeal of laws for the protection of strike-breakers and for compulsory arbitration in labor disputes. This program met with strong opposition, and on February 8 the non-socialist parties combined in defeating the government, 86 to 63. Two days later the ministers resigned, and Mr. Mowinckel, a former premier and the leader of the Radical party, undertook to form a ministry. His colleagues were chosen from his own party only, which, as has appeared above, mustered but thirty votes in the Storting. Mr. Mowinckel was therefore wholly dependent upon outside support. He is known as the astutest parliamentarian in Norway, but he has, on many occasions, deeply offended the very parties that now had the power to defeat him at their pleasure. Only fear of socialism could keep the Mowinckel ministry in office.

However, it is doubtful if the Laborites will have another chance until after the elections of three years hence. If the party succeeds in taming its bolshevik element, it is not unlikely that Norway will follow the lead of the other Scandinavian countries in establishing a fairly stable socialist government.

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**The Administration of President Leguía of Peru.** On July 4, 1928, President Augusto B. Leguía will have served thirteen years as chief executive of Peru—the last nine of them consecutively—and will still have one year of his present five-year term ahead of him. This is a remarkable record not only in Peru but in all South America. In fact, in Peru only two other presidents have served two complete terms, and those not consecutive; while Señor Leguía has the honor of being the only man who has been elected three times to the first office in the land. However, the moment one commences to take note of the various accomplishments of this diminutive dynamo of Peruvian politics, the smashing of precedents appears to be a routine matter of administrative efficiency.

Leguía was elected president in 1919, but apparently fearing that his political enemies might try to prevent him from taking office, he for-

stalled them by a *coup d'état* of his own. Less than a month after his installation, a presidential decree placed before the people a project for such a drastic reform of the constitution that it was apparent that what was really contemplated was a new constitution.

This was the more unexpected inasmuch as the constitution of 1860 had served satisfactorily as the organic law of Peru for more than half a century, and the amending process was comparatively simple. But the president's power was shown when a day later a new decree called for elections, not only to ballot upon the reform of the constitution, but also to elect senators and deputies to the Congress, and deputies to the regional legislatures which would exist only in case the president's project of constitutional reform was adopted. Further to curtail useless expenditure upon electoral machinery, it was ordered that the Congress should be elected in accordance with the ratio provided in the program of reforms rather than in accordance with the existing constitution, and that this body should then function as a national constitutional assembly to effect the reforms to be approved later by the people at the polls.

The constitutional convention thus brought into existence soon decided to discard the former constitution, and within three months it adopted a new constitution which included verbatim the nineteen reforms originally announced in the executive decree. One of these, which makes the terms and time of election of senators and deputies coincident with those of the president, has made the legislative body even more than formerly the willing tool of the executive. On the other hand, the provision which forces the resignation of any minister upon the passage of a vote of lack of confidence in either chamber would seem to give the Congress powers equal to those in a parliamentary system in the case of a weak incumbent of the presidency. Needless to say, under President Leguía both ministers and the Congress are entirely subject to the executive.

The new constitution also increased the term of office of the president from four to five years. The provision of the earlier constitution against two successive terms was retained. But shortly before the expiration of President Leguía's first term this oversight was remedied, when Article 119, prescribing that any citizen filling the presidency might not be reelected for the following term, was amended to read that any citizen holding the presidency might be reelected for a single time for the following term. Before this change was made, some five candidates were being talked of as successors to President

Leguía. When, however, it became clear that he intended to succeed himself, only one candidate dared to oppose him actively—Dr. German Leguía y Martínez, a justice of the supreme court. Indeed, before the candidacy of the latter could assume serious proportions he was accused of fomenting a political revolution, arrested, and sent into exile. In the elections of 1924, the returns gave President Leguía 287,969 votes to his opponents' 155. When the writer inquired in southern Peru, where the opposition to the president was particularly strong, why so few votes were cast against him, he found that few of the voters had gone to the polls. As one elector said, "If you were against the president, your vote would not be counted; if you were for him, your vote would be counted anyway."

Once established in office, with a constitution practically as he wished it, President Leguía proceeded to put into effect his program of economic reforms. But first of all he completely crushed the opposition by seizing the various leaders of the opposition parties and forcing them to follow his cousin into exile. The two principal newspapers of Lima happened to belong to his opponents; one was seized and turned into a government organ, the other was so completely cowed that it ceased to print political articles. The ministers were made executive pages and the Congress functioned merely to ratify the government's orders. The political philosophy of the Leguía régime, as its supporters see it, is somewhat as follows. A one-party government is needed in Peru today because the people are tired of party conflicts and a policy of negation. Before political liberty can be enjoyed a people must learn to discipline itself, and a dictatorship is more popular than anarchy. With conspiracies suppressed, normality will return, and with the return of normality will come political culture. The present régime is one of evolution; it envisages a new and better Peru for tomorrow.

If remarkable economic progress in a state is ever a justification for the suppression of political liberty, the administration of President Leguía should receive a unanimous vote of confidence. He has achieved the results of a Mussolini, but without braggadocio or bluster. In no former administration has the country made such rapid advances in trade and industry. The great mineral wealth of the land has never before been exploited on so vast a scale or so advantageously to the state. The total mineral production value for 1926 amounted to almost \$100,000,000, and today Peru stands first in the world in the production of vanadium, third in the production of silver, sixth in the production of copper, and eighth in the production of petroleum.

But it is in the more difficult and less spectacular field of agriculture that the administration has accomplished the greatest feats. From Tumbes to Arica, the coastal plain is a dreary stretch of desert sand which only requires the waters from the neighboring Andes to change it into luxuriant fields of cotton and sugar. President Leguía has embarked upon a program which will accomplish this result. Already the Cañete has been tapped and acres of tall cotton may be seen in the scorching desert close to Cerro Azul. The great project for the irrigation of the Pampas del Imperial, recently completed, will open up over 17,000 acres of fertile soil almost at the doors of Lima. But these undertakings are hardly in the same category with the stupendous plan already begun for irrigating the vast Pampas de Olmos, which may ultimately bring a half million acres under cultivation in the departments of Pivra and Lambayeque. Some idea of the difficulty of this project may be obtained when it is realized that over a thousand miles of roads must be built merely to transport the necessary machinery and equipment, and another thousand miles to enable the irrigated lands to be populated and worked. A tunnel ten miles long through the Andes will divert the water of the River Huancabamba from the Atlantic to the Pacific. This project alone will cost the government about five million dollars a year. In his message to the Congress delivered July 28, 1927, President Leguía estimated that since 1919 £P 2,292,762 (over ten million dollars) had been spent on irrigation works.

The Leguía administration has also given much attention to better transportation facilities. Anyone who has travelled from Lima to Oroya, or from Mollendo to Arequipa, will readily appreciate why Peru possesses scarcely two thousand miles of railroads. The natural obstacles are such that the cost of construction is almost prohibitive. The Central Railroad, running from Callao to Huancayo, about 150 miles by air line, goes from sea level to over fifteen thousand feet, and the trip requires two days. A fast airplane might do it in an hour. From Lima to Cuzco, about 350 miles by direct line, takes six days; while from Lima to Iquitos, Peru's outpost on the Amazon, takes over a month of hard travelling. President Leguía is not only constructing railroads to remedy this situation, but is opening up motor roads to supplement them. The new concrete highway from Callao to Lima will, it is estimated, save the country almost two million dollars annually in transportation costs.

Nor has the government of Leguía limited itself to the stimulation of production and construction. Improvements and economies have been introduced in the public services. A national reserve bank has been established which has proved of vital benefit to business and credit. The post-office department, now run by the Marconi Company, for the first time in its history has changed the annual deficits into profits. A French military mission has been invited to assist in reorganizing the army, and an American mission has performed the same service for the navy. The new constitution has introduced many social and economic reforms, and a new penal code makes effective the standards of justice of the most civilized states. A recent bill before the Congress will nationalize all archaeological explorations in Peru and make the Inca temples and burying grounds the property of the state. A project to build a thousand sanitary dwellings in Lima for the poorer class of laborers, and to increase the number of schools, plazas, and playgrounds, has now been authorized. Infant mortality in Lima has fallen from 230 per 1,000, the figure of a few years ago, to 149 per 1,000 in 1927. The legislature of 1927 granted President Leguía power to penalize manufacturers found to be making exorbitant profits, by lowering the tariff on their products at his discretion; and inasmuch as the initiative undoubtedly came from the executive, it may be expected that the power will be used more effectively than is the flexible tariff provision under President Coolidge.

In a word, President Leguía has brought about a social, economic, and industrial revolution in Peru which has been so obviously beneficial that the average inhabitant of the country seems strongly inclined to forgive the chief executive for the fissures undoubtedly made in the constitutional foundation of the state.

GRAHAM H. STUART.

*Stanford University.*

## REPORTS OF ROUND TABLE CONFERENCES

HELD IN CONNECTION WITH ANNUAL MEETING OF THE AMERICAN  
POLITICAL SCIENCE ASSOCIATION AT WASHINGTON, D. C.,  
DECEMBER 28-30, 1927.

### 1. THE LEGISLATIVE PROCESS

This round table was developed with a view to examining the legislative process as it functions in practice rather than as it is charted in constitutional and political science treatises. For illustrative purposes, the McNary-Haugen bill was chosen. That measure, by reason of its political and economic importance, its popular interest, and the fact that its passage has been bitterly contested both within and without the Congress, was well adapted for exemplifying those phases of the legislative process that are of peculiar interest to the student of political science. Furthermore, speakers before the round table were chosen for their knowledge of the facts concerning that piece of legislation.

At the first meeting, Dr. Charles J. Brand, executive secretary of the National Fertilizer Association, presented the origin of the McNary-Haugen idea, the early consideration of it by the Department of Agriculture, and its first introduction to the Congress. Dr. Brand's experience as former head of the bureau of markets of the Department of Agriculture, and later as economic adviser to the Secretary of Agriculture, led him to the conclusion that the great measures affecting agricultural economics, such as the Meat Inspection Act, the Grain Futures Act, the Grain Standards Act, the Cotton Futures Act, and the Packers and Stockyards Act, resulted from the consideration given by various groups of agricultural and marketing interests to their own economic difficulties.

In the case of the McNary-Haugen bill, Dr. Brand pointed out that its principles were developed from the experience of Mr. George N. Peek as vice-president in charge of sales of Deere and Company, and as president of the Moline Plow Company. Loss of relative purchasing power by the farmer during the war period resulted in his inability to purchase farm implements. Enhanced purchasing power was necessary before the sales of agricultural implements concerns could be increased. Faced with this problem, Mr. Peek turned his attention to increasing the purchasing power of the farmer through marketing devices that would relieve the domestic market of the depression in prices caused by unavoidable surplus production



of agricultural commodities. The origin of the McNary-Haugen bill, therefore, illustrated Dr. Brand's conclusion that ideas for legislation are developed outside the halls of Congress and among those who are stimulated to economic invention by economic pressure.

Dr. Brand described how the McNary-Haugen idea was presented to himself and the former secretary of agriculture, Mr. Wallace, by Mr. Peek and those associated with him. The consultations with business interests, the economic analyses made by departmental and other experts, the consideration given by the President's first agricultural conference, and the many preliminary drafts of the theory were set forth. Finally were explained the presentation of the matter to Senator McNary and the political considerations which resulted in his being asked to sponsor the measure.

Mr. George N. Peek, chairman of the Executive Committee of Twenty-two of the North Central States Agricultural Conference, and president of the American Council of Agriculture, then took up the story. He explained the methods by which the farm organizations of the country, their leaders and their members, were educated in the McNary-Haugen idea. Mr. Peek's position was that in the case of great economic measures, preliminary education of that portion of the population that may be expected to be benefitted is a necessary precedent to support for congressional action. Mr. Peek showed that only a small expenditure of funds was made, and that these were not used for the hiring of speakers or promotion work or the other forms of activity which are usually associated in the public mind with a legislative lobby. He further set forth how the agricultural coöperative associations of the country were interested in the McNary-Haugen idea and described the steps by which their interest grew until they finally gave their extensive support to the measure, after it had been modified to permit the coöperatives to enter the marketing channels in competition with existing marketing agencies.

On the second day, Congressman L. J. Dickinson, of Iowa, leader of the farm bloc in the House of Representatives, presented for consideration the relation of the member of Congress to legislation. Mr. Dickinson insisted that the congressman is responsive to the interests of his constituents, in so far as he is able to ascertain them, and that the educational efforts of the farm organizations throughout the country directly resulted in corresponding support of the McNary-Haugen bill by the members of Congress representing agricultural districts. He described the parliamentary efforts whereby, despite

opposition of the leaders both of the administration and the anti-administration forces, the bill was brought to a vote in both houses of Congress. He described how in the House of Representatives the Iowa delegation divided consideration of the economic, parliamentary, and constitutional aspects of the bill among their members in order that the supporters of the measure would be able more effectively to handle opposition on the floor of the House. Mr. Dickinson further described the "mutual understandings" with various groups in the House, other than the farm bloc, resulting in the exchange of support. These understandings, as he explained them, were not formal agreements or binding obligations, but merely a realization by various interests that they must stand together if their respective measures were to receive majority support within the Congress. Mr. Peek supplemented this discussion with an explanation of how the agreement was reached in the Senate whereby the Pepper-McFadden branch banking bill and the McNary-Haugen bill were both given the opportunity of reaching a vote in the Senate without the supporters of either measure being obligated to vote for the other's proposal upon passage.

Mr. E. C. Alvord, special assistant to the Secretary of the Treasury, and former assistant counsel in the office of the Legislative Counsel, described the work of that office in connection with the technical features of legislation. The reference of the McNary-Haugen bill to the office by Senator McNary and Representative Haugen, the numerous redrafts, in pursuance of the introducers' and the committees' instructions, made in order to meet objections as they developed, the analysis of the problems involved in the administrative machinery necessary to carry out the idea, the presentation of those policies for committee selection, the development of the constitutional arguments in support of the bill, the actual framing of the language of the legislation, the work before the committees in executive session, and upon the floor of the House—these were matters which Mr. Alvord set forth for the auditors.

From this outline it will be seen that the legislative process was illustrated by tracing the progress of one legislative idea from its birth, through its early consideration with the executive branch of the government and its support by economic groups, and finally through the legislative machinery in its various parliamentary phases, constant emphasis being placed upon the member of Congress as the medium by which the interested economic groups participate in

the legislative process. Concrete statements, many of them concerning matters unpublished and confidential, made it possible for auditors to construct their own theories from facts presented rather than to be forced to listen merely to the theories of others. Questions and answers consumed perhaps more time than did the informal addresses.

On the third day Messrs. Middleton Beaman, legislative counsel of the House of Representatives, and Frederic P. Lee, legislative counsel of the Senate, illustrated in other fields of legislation the application of many of the deductions that the auditors had drawn from the discussion of the McNary-Haugen bill. The pre-congressional activity with respect to revenue legislation was set forth, with illustrations of the work, throughout the months preceding the present Congress, of the Treasury Department, the staff of the joint committee on internal revenue taxation, the Advisory Tax Council, the office of the Legislative Counsel, and economic, tax, and legal organizations of the country. Discussion was also had on the function of the lawyer, economist, and political scientist in arguing their clients' cases before committees of Congress and the materials used and the methods of presentation. The conference committee and its place in the legislative machinery was developed. The differences in the consideration of legislative measures in House and Senate were pointed out, and attempts were made to explain the factors which result in the Senate frequently being unable to give such intensive consideration to the details of legislation as is the House.

The round table was frankly experimental. The very informality of the discussion, the confidential nature of many of its aspects, and the attempt to minimize doctrines and to accentuate facts make description of it difficult. The auditors themselves served, in great measure, as directors of the discussion. While such treatment may not be as spectacular as the usual addresses, it was undertaken on the theory that the student of political science needs to be furnished with the facts with which he can formulate his own deductions, rather than to be infected with the pet enthusiasms of others.

FREDERIC P. LEE, *director*.

*Washington, D. C.*

## 2. THE DIPLOMATIC PROCESS

Professor Jesse S. Reeves opened the first session with remarks about the paucity of studies of the diplomatic process and the in-

adequacy of those which exist. He called attention particularly to the lack of any comparative study of the organization and methods employed by the foreign offices of the states of the world in the conduct of their very important business.

Mr. Wilbur J. Carr, assistant secretary of state, read a paper on "The Work of the State Department and the Foreign Service," which was a clear exposition of the functions involved and a minute description of the conduct of negotiations in treaty-making. He commented on the inadequacy of the facilities for the efficient performance of the duties imposed on the department and the foreign service.

Rear-Admiral W. L. Rodgers (retired) followed with a paper on "The Rôle of the Navy in the Foreign Relations of the United States." The thesis of this interesting essay was that law and judicial procedure have generally been futile in the settlement of international questions, that diplomacy must be relied on for the reduction of differences between nations, and that the presence of force aids in reaching a decision. Law was declared to be static; diplomacy, supported by force, progressive.

In the discussion which followed this presentation of what the chairman called "an array of controversial material," Professors Fenwick and Borchard came to the defense of law, the former denying that law is static, the latter that it is useless, which he contended was the inference from Admiral Rodgers' paper. Professor Fenwick was unwilling to accept the relevancy of the historical data offered in support of the thesis, since there was no evidence that the nature of international relations in the future would be identical with that of the past. Professor Hornbeck did not think the inference that law is useless was justified. He thought that Admiral Rodgers was simply pointing out that law is not competent to deal with controversial matters which usually cause war between states. He asked whether the diplomatic process of the present or of the future was under consideration, and, assuming the former, expressed the opinion that the state with greater force will have its way in negotiation and agreed with Admiral Rodgers that a settlement of the question would be obtained, whether or not satisfactory to all parties, or final.

Mr. Stewart, of the State Department, endorsed the remarks of Mr. Carr concerning the lack of means for doing the work of the department, giving illustrations. He referred to the need of technical knowledge and of the means of obtaining necessary statistical data. The chairman commented on the importance to the country of com-

petent persons in charge of foreign relations, emphasizing the difficulty of obtaining and of retaining expert knowledge in the Department of State, the tremendous significance that the decision of a subordinate may have, and the absence of definite responsibility for specific decisions.

At the second session the round table considered the place of publicity in the diplomatic process. Where there is an inspired or controlled press, Professor Reeves said, the policy of the government does not suffer from misrepresentation. Under the parliamentary system, government may at once be called upon to defend its policies. Under a free press system and separation of powers, the government of the United States, being exempt from immediate parliamentary criticism and check, is subject to the misrepresentation of its policy both by the press and in Congress. He did not recommend the adoption by the United States of either of the fore-mentioned institutions, but suggested that the Department of State might profit by the services of a well-trained newspaper man, skilled in the appreciation of proper and legitimate news-value, whose duty would be to determine the character and extent of departmental communications.

Mr. Henry Kittredge Norton addressed the group on "Open and Secret Diplomacy." After reviewing the merits urged for the so-called old and new diplomacies, he commented on the difficulty of reconciling the need for deliberation with the demand made by democracies for "open covenants, openly arrived at." He ventured some critical comment on the actual practice of open diplomacy and the results of such practice.

The next speaker, Mr. Roland S. Morris, called open diplomacy a phase of growing democracy. The problem, he thought, was the dissemination of information—what can the public use and what does it need to know? It is wrong to assume that the public is always interested in governmental affairs and that it can grasp the significance of all the information it is given. The people of a country are entitled to know the policy of their government, and the tendency in recent years has been for governments to make known their policies and not to adopt foreign policies and execute them in the secrecy in which they were at one time obscured. In order to obtain agreement, it is still necessary, however, that negotiations between governments be conducted behind closed doors. These negotiations should be in the hands of men in whom the public has confidence enough to be willing to give them full powers.

In the general discussion, frequent reference was made to the Geneva disarmament conference of last May as an occasion illustrating various aspects of publicity methods. For example, Mr. J. P. Baxter, 3rd, mentioned the distorted accounts as to the position of the United States given in the English newspapers during that meeting. Mrs. Laura P. Morgan expressed the opinion that the misunderstanding of the American position and the final failure of the conference to reach an agreement were due partly to the absence of adequate liaison between the American delegation and the press and to the work of self-appointed publicity agents not in sympathy with the purpose of the conference.

In response to remarks about the tendency to criticize government policy and the propriety of such criticism, Mr. Morris expressed the opinion that this revealed dissatisfaction with the general policy of the government, and that criticism is in any case certainly desirable. He asked, however, that the public recognize the difficult position of the State Department, since policy must be framed with the events, and not be hasty in its criticism.

The etiquette of the diplomatic congresses of the seventeenth and eighteenth centuries, its grave significance and its gradual decline, was the subject of the introductory remarks of Professor Reeves on the third day. The international conference which has replaced the congress, its organization and procedure, he said, have not received the attention it merits; yet the success of the conference frequently depends on the preparation made for it.

Professor W. W. Willoughby spoke at some length on "The Procedure of Diplomatic Conferences." He began with a classification of kinds of conferences, and then proceeded to describe official conferences, i.e., those attended by delegates with plenipotentiary powers. The success of such a conference depends, he stated, on two things—the desire of states to come to an agreement and the possibility of such an agreement. He then enumerated and commented upon a number of prerequisites to a successful conference, such as agreement on an agenda and the preparation of data.

Dr. James Brown Scott described in detail the procedure observed at the first Hague Conference, contrasting it with other conferences where the variation was of any significance. He agreed with Professor Willoughby upon the desirability of preparation, particularly mentioning the need for agreement upon the language to be used. He emphasized this need by pertinent illustrations. To the essentials of a suc-

cessful conference as named, he added, first, greater care in appointing competent delegates, and second, greater freedom for these delegates in negotiating. Rigid instructions often destroy the possibility of agreement.

The chairman endorsed Dr. Scott's statement concerning the need for agreement upon language. He thought it would be very fortunate if the states should adopt French as an international language. Others agreed with the need for an international language, but some expressed a preference for English, or for the language most familiar to the parties to the conference.

The subject of publicity was reopened by Mr. Norton and Miss Randolph, by asking how the faults attributed to newspapers could be eliminated. Mrs. Morgan suggested that the State Department take the newspapers into greater confidence, instructing them as to what is confidential and what not. Mr. Spykman thought that much of the difficulty is attributable to the attitude of diplomatic and foreign offices. It is a predisposition with them, he said, to keep out newspaper men from all meetings, and to make exceptions to this rule only when doing so might prove useful. Much of the bad feeling complained of develops as a result of this attitude.

H. B. CALDERWOOD, JR., *secretary*.

*University of Michigan.*

### 3. FEDERAL RELATIONS

The conduct of the round table on federal relations was consciously shaped in the light of the suggestion of the program committee that the unique facilities of Washington be utilized in introducing members of the civil service to the Association. The subject-matter of federal administrative relations was well suited to this purpose. Under the circumstances, active participation in the round table was deliberately loaded in favor of national experience and viewpoints. In order to reveal tendencies in a phase of government where administrative practice has outstripped theory, and even the literature of mere description, it seemed desirable to inject numerous and varying examples of federal coöperation, even though the price was a regrettable curtailment of questions and discussion. Altogether, the three sessions were addressed informally by fourteen persons officially engaged in thirteen different units of national administration, by the Washington representative of one of the most important associations of state officers, and in addition by the foremost academic investigator of the special

field of federal subsidies, Professor A. F. Macdonald, of the University of Pennsylvania.

So far as the resulting symposium was informed by a common viewpoint, it was the hardly concealed desire of the director to call attention approvingly to changing aspects of federalism in which his own interest has led to studies which will be published later. These changes—fragmentary, diverse, and variously motivated—can be generalized as the weaving of horizontal lines of functional union across the vertical divisions of geographical decentralization. Three phases of the tendency were dealt with in the successive sessions of the round table.

The opening meeting was given to a consideration of illustrations of state participation in the administration of national laws. Mr. O. C. Merrill, secretary of the Federal Power Commission, discussed the responsibilities left to the states under the congressional act of 1920; this he thought to be an inherently desirable policy, quite apart from the lack of facilities on the part of the Federal Power Commission. Mr. John E. Benton, general counsel of the National Association of State Utilities Commissioners, criticized some features of the transportation act of 1920 and its interpretation, especially in creating frozen areas of regulation, but—although he intimated that the state authorities would continue to urge certain statutory changes—his replies to questions indicated that in his opinion the modified agreement of 1922 between the Interstate Commerce Commission and the state commissions for coöperative hearings and the like promises to work satisfactorily. Mr. J. J. Britt, head of the legal division of the Prohibition Bureau, in the course of a pithy review of the unusual problems of federal relationship involved in prohibition enforcement, made no bones about the unfortunate effect of certain recent decisions. He pointed out that in the face of criticism of the executive order of 1926 permitting the direct deputizing of state and local officers, little use had in fact been made of it; in practice, resort is had, rather, to less formal administrative coöperation through joint raids and the like. Mr. Lloyd S. Tenny, chief of the Bureau of Agricultural Economics, focussed his description of the coöperative methods characteristic of so much of the work of this bureau on the scheme of licensing individuals as graders, whereby state personnel are virtually incorporated in the administration of such measures as the grain standards act.

Mr. W. C. Henderson, associate chief of the Bureau of the Biological Survey, dealt particularly with the practice of appointing certain of



the state game wardens as deputies in connection with the enforcement of the migratory-bird treaty act. Despite its very small staff, however, the bureau has not deputized many state officers; instead, it largely secures the state assistance indispensable to the enforcement of the national act indirectly through the adoption of the national requirements in state laws and regulations. Dr. W. F. Draper, assistant surgeon-general of the U. S. Public Health Service, explained the administrative arrangements by which the service largely delegates to the states supervision of the water supplies of interstate carriers, while preserving the leverage this power incidentally affords. The illustrations of formal and informal investiture of state and local agencies with power under acts of Congress were closed by Mr. W. S. Frisbie, head of the office of state coöperation of the Food, Drug and Insecticide Administration. Mr. Frisbie (whose remarks went over to the second session because of shortage of time) emphasized the importance of the indirect coöperation secured by the assimilation of state to national standards, but also dealt with the usefulness in some circumstances of direct state initiative in bringing actions under the national law, of the still more widely serviceable plan of commissioning state officers for the collection of samples, and with the value of having an office like his own to give special attention to the cultivation of state relations.

The second meeting was devoted to the operation of federal subsidies in the form commonly called federal aid. Professor Macdonald opened the discussion by presenting some of his findings in the course of a recent field investigation of federal aid made under the auspices of the Social Science Research Council.<sup>1</sup> Though critical at points, his conclusions were favorable. He summarized answers which he had gathered from state administrators in reply to three questions: (1) Has federal aid stimulated state activity? (2) Has federal aid raised state standards? (3) Has federal aid encouraged federal interference in state affairs? Of 264 state directors who replied (covering coöperation in agricultural extension, forestry, highway construction, vocational education and rehabilitation, and the maintenance of militia), 240 answered affirmatively to question 1; 181 affirmatively to question 2; whereas 245 answered question 3 negatively. Of the sixteen who

<sup>1</sup> The full results of Professor Macdonald's inquiry, in the course of which he visited more than half of the states of the Union and held over a thousand interviews, have since been published in his book, *Federal Aid: A Study of the American Subsidy System* (Crowell, 1928).

replied affirmatively to the last question, moreover, ten were state adjutants-general whose complaint was really against conditions beyond the control of the militia bureau. Various problems in the central supervision of federal aid were discussed in the light of experience by Miss Grace Abbott, chief of the Children's Bureau, and Messrs. Thomas H. MacDonald, chief of the Bureau of Public Roads, M. C. Wilson, of the Agricultural Extension Service, and J. G. Peters, in charge of state coöperation for the U. S. Forest Service.

The third meeting was concerned with written agreements, contracts, and compacts as instrumentalities of coöperative administration. Their use between national and state agencies was discussed by Messrs. George Otis Smith, director of the U. S. Geological Survey, and N. C. Grover, chief hydraulic engineer in charge of the water resources branch, and also by Mr. H. Goding of the Bureau of Animal Industry. Based on experience with many hundreds, even thousands, of such written agreements, their comments emphasized their view that, legally, these agreements are essentially gentlemen's understandings, but that, administratively, they have weight. Agreements among states—interstate compacts—were involved in the interesting review of federal relations in the utilization of water resources presented by Mr. Elwood Mead, U. S. commissioner of reclamation. He indicated a preference for a more national treatment of river basins than constitutional construction at the moment would be likely to permit, and he revealed some skepticism (speaking in the light of the Colorado River compact) regarding the possibilities inherent in interstate treaties, at least if unsupported by a definite and continuing national impetus.

ARTHUR W. MACMAHON, *director*.

*Columbia University.*

#### 4. PROBLEMS OF PUBLIC ADMINISTRATION

The round table subjects were three: (1) public personnel administration; (2) reorganization of the federal government; and (3) reorganization of state government. Each meeting was under the chairmanship of Dr. W. F. Willoughby, director of the Institute for Government Research, who opened the meetings with a general introduction to the subject. The average attendance was thirty.

On the first day Mr. George R. Wales, a member of the United States Civil Service Commission, read a paper on public personnel management in which he described the federal personnel system, its

magnitude and the restrictions necessary in the operation of it. He also touched upon weaknesses and difficulties and the necessities for improvement of administration. He advocated control over personnel matters in a department by the head thereof, but centralization of the administration of general policies in order to insure uniformity. The scattered practices and lack of uniformity now existing could, he maintained, be subjected to a coördinated policy under the civil service law of 1883; and he suggested the creation of a coördinating board composed of the personnel officers of the various departments and establishments working in conjunction with the Civil Service Commission. Upon question of Dr. Morris B. Lambie, of the University of Minnesota, Mr. Wales denied that legislation is necessary for this step, and stated that it could be brought about through the chief coördinator's office.

Mr. Fred Telford, of the Bureau of Public Personnel Administration, emphasized the fact that twenty scattered agencies administer the federal civil service and that a mass of uncorrelated legislation exists. He questioned whether a coördinating board could function under existing conditions and whether an executive order could set aside so many laws. He maintained that drastic legislation and reorganization are necessary. Dr. Ellery Stowell, of the American University, asserted that conditions are chaotic and that the entire plan is wrong. He advocated complete centralization, and one executive head for civil service, since most of the work is executive and administrative.

Dr. L. M. Short, of the University of Missouri, questioned the value of consolidation and coördination unless selection and promotion were combined. Mr. Wales admitted that little advance has been made in promotional procedure and that efficiency ratings and promotional decisions should rest in a department or unit, and not, as now, with a separate, outside organization.

The second session, following an opening address by Dr. Willoughby on various phases of the reorganization problem, was devoted to a paper by Mr. L. W. Wallace, secretary of the American Engineering Council, on federal reorganization. The paper dealt principally with the efforts toward establishment of a United States department of public works and public domain, to take over rivers and harbors work, public roads, building construction, reclamation, etc. This, admittedly, is half a loaf, but the most to be expected, or advisable to push, at present. The paper emphasized the probable resulting economies and the possibility, under such consolidations, of pro-

moting nation-wide public construction enterprises during periods of slack employment, it being brought out that such federal programs at present go ahead without reference to economic conditions or business cycles.

Dr. Willoughby emphasized the distinction between public works construction for the public use at large and for the government itself. He stated that the new department would act as a construction agency, on call, for other departments. The point was also brought out that trained engineers for war service would be as readily available as if rivers and harbors were under the War Department. Professor Fairlie, of the University of Illinois, emphasized that piecemeal reorganization is feasible and practical, as demonstrated by the experience of Illinois. It was noted, too, that "special interest" councils could be established for various fields, e.g., child welfare and agriculture.

The basis of reorganization was also discussed, that is, (1) by classes of persons benefitted, (2) by functions. It was agreed that neither method is exclusively possible. It was mentioned that the "Brown plan" of reorganization forms the basis of most recent suggestions. In most cases a combined or hybrid plan is necessary.

Professor W. H. Edwards, of the University of North Dakota, read the main paper at the third meeting, the subject being state reorganization. This paper seriously questioned centralization and executive control of administration and brought forward the commission, legislative, or "interest group" plan of administration, on the theory that legislative responsibility is desirable. Dr. Willoughby brought out that executive responsibility in no way abrogates legislative powers. Under the executive plan, the governor merely becomes responsible and responsive executor of legislative policies.

Dr. L. M. Short, of the University of Missouri, maintained that continuity of personnel and centralized fiscal control are the vital factors. Numerous speakers illustrated the evils of board and commission administration, by example and experience. The consensus was for executive centralization of administration with accompanying responsibility.

Discussion turned to the pre-audit and its abuse. Examples were cited where pre-audit, by the executive, was used so as to constitute essentially a veto of legislative enactment. Dr. Short cited Missouri practice in which withholding a portion of an appropriation, ostensibly to prevent a deficit, acts effectively as a threat or a veto in fact.

DARRELL H. SMITH, *secretary*.

*Washington, D. C.*

## 5. THE GOVERNMENT AND THE PRESS

Professor Robert D. Leigh, of Williams College, as director of the round table, outlined the problems before it as follows:

- I. Methods of reporting Washington news and their defects.
  - A. Congressional and Supreme Court news
  - B. White House news
  - C. Cabinet, departmental, and bureau news
  - D. News from private propaganda sources
- II. Newspaper handling of the political news
  - A. Theories of newspaper bias and defect
    1. Evolution of the newspaper business
    2. Ignorance theory: defects in training of reporters and defects in news-gathering technique: e.g., Walter Lippmann, *Public Opinion*
    3. Conspiracy theory: control by owner and advertiser: e.g., T. R. B. in *New Republic*, 1923-1927; Upton Sinclair, *The Brass Check*
    4. Yokel theory: control by readers' interest and bias: e.g., H. L. Mencken's article in Bleyer's *The Profession of Journalism*
  - B. Test of theories in newspaper treatment of recent news
    1. Oil and other scandals of Harding régime
    2. Coolidge administration; especially coal strike and French debt controversy
    3. Mellon tax plan
    4. Mexican and Nicaraguan relations
    5. Senatorial primaries; Smith, Vare, and Gould cases
    6. Smith-Marshall debate
    7. Sacco-Vanzetti case
- III. Influence of the newspapers in the formation and expression of public opinion

Mr. J. F. Essary, of the *Baltimore Sun*, described the way in which Washington news, and more particularly White House news, is gathered. He traced the development of the White House conferences from their institution during the Taft administration to the present, pointing out that the "free and easy" spirit of the conferences in the Roosevelt and early part of the Wilson administration has given place to a much more rigid system. At the present time the proceedings are entirely *ex parte*; written questions must be submitted in advance of the conference, the President answers only those he wishes

to, and correspondents are not permitted to quote questions which are not answered. Throughout his talk Mr. Essary emphasized the independence of the press in this country and gave it as his opinion that even the recent restrictions do not make it impossible for correspondents to present an accurate picture of the news. In the discussion which followed, one Washington newspaper man deplored the tendency to magnify the importance of the President in the Washington dispatches, for the reason that it gives the people the erroneous idea that he is the real leader and spokesman of the Administration, when as a matter of fact most of the opinions expressed by him are formulated by others and might be obtained directly from those individuals. Mr. Leigh pointed out that this criticism ran counter to the tendency of political scientists to emphasize the desirability of executive leadership.

The problems connected with the reporting of Supreme Court news were presented by Mr. Hankin, of the Legal Research Bureau. He compared the accuracy of the British court reports in the *London Times* with the poor reporting of court decisions in the United States. He pointed out that in order to be both readable and accurate such reports must be written in the first instance by a lawyer, put into readable form by a newspaper man, and then revised by a lawyer. In order to get the news to subscribers in a short space of time, Mr. Hankins' organization finds it necessary to prepare the facts and the possible decisions of each case in advance of the actual decision.

Mr. George, of the publicity bureau of the Department of Agriculture, described some of the difficulties connected with the presentation of departmental news. Technical reports must be put in readable form and the department is under continual pressure from organizations desiring it to endorse such campaigns as "eat more meat" week.

Mr. Leigh outlined the various explanations which have been advanced for newspaper bias and defects. The "ignorance theory" emphasizes the lack of specialized technique on the part of press correspondents; the conspiracy theory points to the pressure which newspaper owners and advertisers bring to bear upon editors in shaping the policy of the paper; and the yokel theory puts the responsibility upon the public, on the ground that readers demand and will pay for sensationalism. He pointed out that these theories are not mutually exclusive and that probably the real explanation is a combination of these. Mr. Judson King, of the National Popular

Government League, gave a case study of the way in which private propaganda influenced the press in connection with the water-power question. He gave numerous instances of the way in which mis-statements of fact concerning publicly-owned electric power plants in Canada had been circulated in the press of the United States and Canada.

Upon the last day of the meeting Mr. David Lawrence, of the *United States Daily*, was present to answer questions and explain farther the ideas presented by him at a previous luncheon meeting. He deplored the contemptuous attitude of the press toward public men and gave this as one of the reasons why many men will not accept high administrative positions or run for office. In the discussion following, the opinion was expressed that the knowledge on the part of intelligent people of the publicity "hokum" and resulting from the false inflation of men in public life has as much to do with keeping promising material out of politics as any process of deflation that goes on. Mr. Lawrence emphasized the part which the advertiser plays in bringing pressure to bear upon the publisher to increase the circulation of a newspaper, the publisher in turn bringing pressure to bear upon the editor to print the kind of news that the people like. He expressed the opinion that the character of the news will be vastly improved when advertisers are brought to a realization that it is the quality, rather than the quantity, of circulation that is important to them, and pointed to the introduction of qualitative analyses of advertising as a hopeful sign.

LOUISE OVERACKER, *secretary*.

*Wellesley College.*

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

By vote of the Executive Council, the twenty-fourth annual meeting of the American Political Science Association will be held at Chicago on December 27-29. The members of the committee on program are Professors S. Gale Lowrie (chairman), John Dickinson, A. W. Macmahon, Kirk H. Porter, and W. J. Shepard.

Professor Charles E. Merriam delivered the convocation address at the conclusion of the winter quarter at the University of Chicago, his subject being "Regional Planning."

Professor James W. Garner, of the University of Illinois, will spend the next academic year in travel in Europe, the Near East, and Egypt.

Professor Bruce Williams, of the University of Virginia, has been appointed to a professorship in the department of government at Cornell University.

Professor Thomas H. Reed, of the University of Michigan, has been serving as director of research for the Pennsylvania commission to study municipal consolidation in counties of the second class.

Professor Robert E. Cushman, of Cornell University, is acting professor of government at Harvard University during the second half-year. He is giving one course for Professor A. N. Holcombe and one for Professor H. A. Yeomans, both of whom are on leave.

Dean Herman G. James, of the University of Nebraska, will give a course in Latin American political institutions and a course in municipal organization, during the coming summer session, at the University of California at Los Angeles.

Professor Robert D. Leigh, of Williams College, has been elected president of a new institution in Vermont to be known as Bennington College for Women. Mr. Peter Odegard, of Columbia University, has been appointed his successor at Williams, as assistant professor of political science.

Professor Lindsay Rogers, of Columbia University, has been employed by Governor Smith in recent months as a Moreland Act com-



missioner to investigate the department of labor of the state of New York.

Dr. Stephen P. Duggan, director of the Institute for International Education, retired in January as head of the department of government in the College of the City of New York.

Professor John Dickinson, of Princeton University, is conducting a graduate seminary at Bryn Mawr College in the absence of Professor Roger H. Wells, whose undergraduate courses are in charge of Dr. Henrietta C. Jennings.

Professor Leonard D. White, of the University of Chicago, has been elected a trustee and member of the corporation of the National Institute of Public Administration.

During the winter quarter, Professor Harold D. Lasswell, of the University of Chicago, was on leave for half time while working with the Social Science Research Council's committee on scientific method. Professors C. E. Merriam and J. A. Fairlie are other members of a committee appointed to represent the interests of political science in the preparation of a methodological case-book in the social sciences.

Professor Ralph S. Boots, of the University of Pittsburgh, will teach at the University of Nebraska during the second half of the coming summer session.

Mr. Lennox A. Mills, PhD., Oxon., is lecturing in political science at the University of Minnesota in the winter and spring quarters, and is in charge of some of the courses formerly taught by Professor C. D. Allin.

Dr. Herman C. Beyle, assistant professor at the University of Minnesota, has accepted a professorship in the School of Citizenship and Public Affairs at Syracuse University, beginning next fall.

Mr. Harvey Walker, instructor in political science at the University of Minnesota, and acting head of the Municipal Reference Bureau, has accepted a call to an assistant professorship in the department of political science at Ohio State University.

Dr. V. Kenneth Johnston, at present acting assistant professor of government at Cornell University, goes in June to the Historical Records Office in Ottawa, a post which he had accepted before he went to Ithaca.

Professor Louis B. Schmidt, of the Iowa State College of Agriculture and Mechanic Arts, will give courses, including one on the history of international relations, at the University of Alabama during the coming summer session.

Professor Kirk H. Porter, of the State University of Iowa, will conduct a round table on county and state government at the Virginia Institute of Public Affairs, to be held at the University of Virginia this summer.

The department of political science at Stanford University announces the promotion of Dr. Graham H. Stuart to a full professorship and the appointment of Dr. Thomas S. Barclay and Dr. Walter Thompson as associate professors. Mr. Chester H. Rowell has been reappointed lecturer in international relations, and Mr. John M. Edy has been made lecturer in public management.

Professor William H. George is on leave of absence from the University of Washington for the second semester of the present academic year and is teaching courses in American political theory and institutions at the University of Hawaii. Before returning to the United States Professor George will visit the South Sea Islands. He is collecting materials for a book on the government of Hawaii. Professor Francis G. Wilson, of Stanford University, is teaching the courses in political theory at the University of Washington usually offered by Dr. George.

Professor Jesse S. Reeves, of the University of Michigan, will offer a course in international law and a seminar in international law and relations in the University of Washington summer school. Professor Woody, of the University of Chicago, will give courses in comparative government and political theory, and Professor W. Leon Godshall, of Union College, courses in the government of dependencies and Far Eastern relations.

Professor Kenneth Cole, of the University of Washington, has been granted another year's leave of absence in order to carry on his advanced studies and teaching at Harvard University. Meanwhile Mr. Granvyl Hulse, of Harvard University, will continue as instructor in political science at the University of Washington, giving courses in state and municipal government.

Professor Linden Mander, formerly of University College, Auck-

land, New Zealand, has been appointed assistant professor of comparative government at the University of Washington. Professor Mander will spend the summer in England obtaining material from the archives of the government offices for a forthcoming book on the British Commonwealth of Nations.

Mr. John J. George, of the University of Michigan, will teach history and political science at Denison University during the coming summer session.

Dr. Harley F. MacNair, associate professor of Far Eastern politics and diplomacy at the University of Washington, will teach in the summer session of the University of Chicago.

Mr. A. S. White, formerly professor of political science at Marshall College and at present honorary fellow in political science at the University of Wisconsin, will give courses at the University of Kentucky during the coming summer session.

Mr. C. Walter Young, formerly instructor in political science at the University of Minnesota, is completing his third year as Willard Straight fellow in Chinese studies. The first two years were spent in China; the present year, at the University of Leiden. Mr. Young's doctoral dissertation will deal with Japanese colonial policies and administration in Manchuria.

Mr. J. F. Shreiner, who is completing his residence work for the doctorate at the University of Wisconsin, has been appointed assistant professor of political science at Miami University.

Dr. Lewis Rockow and Mr. Dale A. Hartman have resigned their positions in the School of Citizenship and Public Affairs at Syracuse University, to take effect in June. Mr. Hartman will become a candidate for the doctorate in political science at the London School of Economics and Political Science, and Dr. Rockow will do research work in the British Museum.

Professor James Quayle Dealey, head of the department of social and political science at Brown University, will retire at the close of the present academic year. Recently Professor Dealey has published two short works, of which one is a history of the department of social and political science at Brown University from 1891 to 1927 and the other is a study entitled *The Political Situation in Rhode Island and Suggested Constitutional Changes*.

Professor W. W. Willoughby, of the Johns Hopkins University, is spending the second half of the academic year in travel in South America, Africa, and the Mediterranean region. During his absence Dr. James Hart has conducted the political science seminary, and has also lectured on "government and public opinion." Dr. Hart will be a member of the summer quarter faculty of the University of Virginia for the fifth consecutive summer, and will offer graduate courses on "science and politics" and "government and public opinion." Professor W. W. Cook, of the Yale Law School, is for the second consecutive year visiting professor in the political science department of the Johns Hopkins University. He is offering a course on the legal and logical bases of the conflict of laws.

Three out of twenty-one research fellowships awarded by the Social Science Research Council for the year 1928-29 are in the field of political science. The three fellows and their projects are: Harold F. Kumm, University of Minnesota, "The limits of executive and administrative discretion in administrative law"; Harold D. Lasswell, University of Chicago, "Possible uses of psychiatric methods in the study of political personalities"; and Rodney L. Mott, University of Chicago, "English and European legal concepts similar to the American constitutional concept of due process of law."

During the summer quarter Professor Francis W. Coker, of Ohio State University, will give courses at the University of Chicago on recent political theory and recent developments in American constitutional doctrine. Professor Raymond Moley, of Columbia University, will give courses on comparative political parties and the administration of criminal justice. Mr. John Crane, director of the Institute of World Politics, will give a course on Central European politics; Professor Rodney L. Mott will give courses on advanced American and comparative government; and Professor Quincy Wright will lecture on the international law of peace and on treaties.

Mr. A. L. Dixon, assistant secretary of the Home Office, Great Britain, gave a series of lectures during the first half of the spring quarter at the University of Chicago on the subject of police administration in Great Britain. These lectures were attended, not only by graduate students, but by police officials detailed from Cincinnati, Kenosha, and other cities.

At a Southeastern Citizenship Conference, held at Emory Uni-

versity in February, lectures were delivered by Professor James W. Garner, of the University of Illinois, on aspects of American citizenship and foreign policy, and by Hon. Adamantios Th. Polyzoides, editor of *Atlantis*, on Eastern European and Mediterranean politics.

The Dodge lectures on citizenship were delivered at Yale University during February and March by Professors Charles P. Howland of Yale, Joseph Schumpeter of Vienna and Harvard, John H. Latané of Johns Hopkins, and James T. Shotwell of Columbia, and Mr. H. N. Brailsford. Lectures on the Sherrill Foundation for International Relations were given by Senator George H. Moses of New Hampshire and Dr. Albert Shaw, editor of the *American Review of Reviews*.

The University of Cincinnati has reestablished an office of its municipal reference bureau in the city hall, under a coöperative arrangement with the city government. The bureau will serve the city directly in supplying information on problems of city government, preparing abstracts and reports, and digesting and making available current municipal literature. The University has appointed Mr. Emmett L. Bennett, a graduate of the University of Kansas, as director of the bureau. Some years ago Mr. Bennett was in charge of the municipal reference bureau of the University of Minnesota, and more recently he has been in the service of the Cleveland city council as its legislative aide.

Far-reaching recommendations of measures to insure a greater degree of justice for the poor man than is now ordinarily available are contained in a report submitted in March to the Association of the Bar of the City of New York and to the Welfare Council of New York City by a joint committee of these organizations. The report is the result of a year's study of the so-called "poor man's lawyers," "poor man's courts," and the legal aid needs, resources, and methods in New York City. The study was financed by the Russell Sage Foundation and directed by former magistrate W. Bruce Cobb, with Mrs. Dorothy G. C. McCann as research assistant.

The University of Chicago is about to erect a building to be devoted to the research activities of the social science departments. The building will immediately adjoin the east end of Harper Memorial Library, and will in some particulars be unique. Except for five seminar rooms, there will be no recitation rooms in it; also no read-

ing rooms or stacks. There will be a large number of study and work rooms arranged in combinations of two, three, or more. On the second floor will be a laboratory for anthropological and archaeological investigation; on the third floor, a laboratory for psychological investigation; and on the fourth floor, a statistical laboratory with adequate equipment for machines. The counting machines will be in special sound-proof rooms in the basement. The building will also provide offices for the social science journals published by the University of Chicago. In general, it is thought of as a structure devoted exclusively to research and graduate instruction.

The first issue of a new quarterly journal, the *Revue Internationale des Sciences Administratives*, was published during the early spring under the auspices of the permanent international committee of the Congress of the Administrative Sciences whose meeting was held some months ago in Paris. A high standard of excellence was set by the first number, which if maintained will enable the publication to rank with the *Journal of Public Administration* published under the auspices of the Institute of Public Administration in Great Britain. Subscriptions at the rate of fifteen belgas may be sent to 16 Rue de la Brasserie, Brussels. The *Revue* will carry not only articles by international authorities in this field, but also a very important bibliographical section which will bring to the attention of American students of government a wealth of material not heretofore available.

The thirty-second annual meeting of the American Academy of Political and Social Science was held at Philadelphia on May 11-12. A session was devoted to each of the following topics: (1) the rehabilitation of Europe and the Dawes plan, (2) recent aspects of our relations with Latin America, (3) China and American foreign policy, (4) the present situation in Russia: its relation to American foreign policy, (5) the present and future of Anglo-American relations, and (6) the present and future of disarmament.

The newly formed Chicago Institute of Local Politics, created under the auspices of Northwestern University, Loyola University, the University of Chicago, and a number of civic organizations, has issued a report calling for greater home rule for Chicago. The report calls attention to three possible ways of attaining the end, but unqualifiedly endorses the plan of amending the state constitution. The authors of the report are Professor A. R. Hatton, of Northwestern University, Professors L. D. White and Jerome G. Kerwin, of the University

of Chicago, and Messrs. E. O. Griffenhagen, George C. Sikes, Harold L. Ickes, and Francis X. Busch.

The American Council of Learned Societies announces the establishment of an advisory board charged with examining and appraising research and other projects, and with "coördinating them and assigning to them their appropriate places in a series of carefully planned programs for the general and systematic development of the humanistic sciences." The members of the board, as appointed in February, are: Professors Dana C. Munro, of Princeton University, chairman; Clifford H. Moore and John S. P. Tatlock, of Harvard University; Michael I. Rostovtzeff and Charles C. Torrey, of Yale University; Carl D. Buck and William A. Nitze, of the University of Chicago; Frank Thilly, of Cornell University; and Frederic A. Ogg, of the University of Wisconsin. The new board held its first meeting in New York on April 7.

The Pacific Southwest Academy of Political and Social Science, founded in 1927 to promote the cultivation of the social sciences and their application to the solution of social and political problems, joined with Pomona College and Claremont Colleges in an Inter-American Institute held in Claremont on February 9-11. Lecturers included Dr. Andres Osuna, director of public education, state of Monterey, Mexico, and Professors Ramon Beteta, of the National University of Mexico, Herbert I. Priestley, of the University of California, and Charles W. Hackett, of the University of Texas.

The twenty-second annual meeting of the American Society of International Law was held at Washington, D. C., on April 26-28. The special committee for the progressive codification of international law, Professor Jesse S. Reeves, chairman, presented a report; and leading papers or addresses—in addition to the annual opening address of Hon. Charles E. Hughes as president—included "The Status of Canada from an International Point of View," by Mr. Justice B. Russell; "Nationality," by Hon. Clement L. Bouvé; "Responsibility of States for Damage Done in their Territory to the Person or Property of Foreigners," by Hon. Chandler P. Anderson; and "Territorial Waters," by Professor George Grafton Wilson. The annual dinner was held at the New Willard Hotel, with Mr. Hughes presiding.

The Third Los Angeles Institute of Public Affairs will be held in

connection with the summer session of the University of California at Los Angeles July 9 to 14. The lectures and conferences will deal (1) with the relations of the United States with Latin-American nations, with special emphasis upon some of the problems of the recent Pan-American Congress at Havana, and (2) with the subject of taxation, with particular reference to some of the issues now before a state tax commission which is to make recommendations to the next legislature for changes in the tax system of the state. Among the lecturers and conference leaders are Dean Herman G. James, of the University of Nebraska; Professor Pitman B. Potter, of the University of Wisconsin; Professor Harley M. Lutz, of Stanford University; and Colonel Lawrence Martin, of Washington, D. C. Professor Malbone W. Graham, Jr., is chairman of the committee in charge of the arrangements for the Institute.

The fifth institute under the auspices of the Norman Wait Harris Memorial Foundation will be held at the University of Chicago from June 18 to June 30. It will be devoted to foreign investments and international finance. Attention will be paid to both the economic and the political aspects of the question, and problems arising in backward and undeveloped areas will be dealt with as well as those arising in the relations of advanced states. Among the lecturers will be Professor Gustav Cassel, of the University of Stockholm; Professor Corrado Gini, of the University of Rome; Professor T. E. Gregory, of the University of London; Dr. Robert R. Kuczynski, of the Institute of Economics, Washington, D. C.; and Mr. Henry Kittridge Norton, of New York. Representatives of several of the government departments at Washington will be present, as will business-men, bankers, and economists from various parts of the country. Round tables will be organized affording an unusual opportunity for detailed discussion of the problems within the range of the institute's program. Public lectures will be given every day during the period of the institute. Persons interested may address Professor Quincy Wright, executive secretary, University of Chicago.

The Institute of International Relations, which has held annual conferences for some years past, will meet this summer at the University of Washington. The dates are July 22-27. As heretofore, there will be morning round tables, afternoon conferences, and evening lectures. Round tables will be organized to consider the following subjects: 1, China; 2, Japan; 3, Great Britain and the United States;



4, international law and organization; 5, international labor; 6, race problems; 7, international commerce; 8, international education; 9, American foreign policy and administration; 10, Latin American affairs; 11, disarmament and national defense; 12, public opinion and international relations; 13, international finance. Round-table leaders and associates will include the following members of the University of Washington faculty: Professors Gowen, Price, McKenzie, Skinner, Griffin, Randolph, Jessup, Leib, Quainton, MacMahon, MacNair, and Mander. Leaders from other institutions will include Professors Thomas of Utah, Maxey of Whitman, Noble of Reed, MacGregor and Maddox of Oregon State, Hills, Barrows, and Williams of California, Dickinson, Massen, and Reeves of Michigan, Bernard of Tulane, Mears, Stuart, and Lutz of Stanford, Potter of Wisconsin, Harley and Bogardus of Southern California, Pitkin of Columbia, Latourette of Yale, Sage of British Columbia, Wooddy of Chicago, and Godshall of Union. The departments of State and Commerce and the Federal Reserve Board have been invited to send representatives to participate in the round tables in which they have a direct interest. The chancellor of the institute is President Rufus B. von Kleinsmid, of the University of Southern California; the director is Professor K. C. Leebrick, of the University of Hawaii; and the executive secretary is Dean Charles E. Martin, of the University of Washington.

The Social Science Research Council desires to call the attention of research workers to its plan of grants-in-aid. These grants, unlike the Council's fellowships, are not awarded merely once a year but are available at various times throughout the year. The primary interest of the advisory committee on grants-in-aid is to bring about the completion of pieces of research, rather than the development of promising researchers. Preference will be given to proposals which involve (a) improvement of technique and development of methods, (b) two or more of the social sciences, including history, or (c) problems of present scientific significance. Preference also will ordinarily be given to applicants from the smaller institutions, from which financial aid for social science research is not at present available. Ordinarily the committee will not propose such grants for persons who are eligible to receive a fellowship from the Social Science Research Council. Further, grants-in-aid will ordinarily be proposed only (a) when a substantial amount of work has already been done;

(b) when the need for financial assistance is demonstrated; and (c) when a definite plan for future work has been presented. Every applicant will be required to submit (1) a careful statement of the proposed plan of work; (2) such parts as are already completed; (3) a statement of the ultimate scope and object of the study; (4) a statement of the sum of money desired; (5) the date when the applicant expects to be free to continue his work; (6) the probable date of completion; (7) the applicant's professional record, including men under whom he has worked, and their endorsement of his application; and (8) a record of other prior pending applications for aid from this or other agencies. Applications should be sent to the office of the Council, 50 East 42nd Street, New York City. The next meeting of the Council's committee on grants-in-aid is scheduled for the middle of June.

**Encyclopaedia of the Social Sciences.** The following report is based upon printed reports of progress prepared by the editor-in-chief, Professor E. R. A. Seligman, and the assistant editor, Dr. Alvin S. Johnson, for the board of directors at its first meeting on December 15, 1927. It will be recalled that the enterprise, as outlined by Professor Seligman, following the meetings of a joint committee which was and is composed of three representatives of each of the participating associations (formerly seven and now ten), involves the publication of about ten volumes at an estimated expenditure of \$600,000, and with a time limit of between five and seven years. The editor-in-chief has personally raised practically all of the money needed, and in May, 1927, the joint committee held a meeting in New York, at which plans were definitely approved and steps taken for organization of the staff and board of directors. The staff includes Dr. Alvin S. Johnson as assistant editor, Dr. Alexander Goldenweiser as associate, and Miss Mary E. Gleason as secretary. For legal advice, the firm of Sullivan and Cromwell, New York, was retained, and the enterprise has been incorporated as Encyclopaedia of Social Sciences, Inc. The board of directors is composed of twenty-one members, eight lay and thirteen academic, the American Political Science Association being represented by Professor John A. Fairlie. The remaining members of the corporation are the members of the former joint committee, on which the three representatives of the Political Science Association are Professors Fairlie and William B. Munro and Mr. J. H. Logan. On the board of advisory editors Drs. Charles A. Beard and Frank J. Goodnow are responsible for political science.

The uses of the encyclopaedia are conceived as threefold: (1) to provide a synopsis for the scholar of the progress that has been made in the various fields of social science; (2) to furnish an assemblage or repository of facts and principles for the use of the legislator, the editor, the business man, and all who are interested in keeping informed on recent investigation and accomplishment; and (3) to constitute a center of authoritative information for the creation of sound public opinion on the major questions which lie at the foundation of future progress and world development.

Though the work is primarily American, and in management distinctively so, the most distinguished scholars of the whole world will be asked to participate. To this end, Professor Seligman interviewed European scholars in the more important universities from Oslo to Florence in the summer of 1927. The heartiness of the coöperation offered him was an explicit recognition that this project would be of signal importance to the progress of the social sciences throughout the world.

The work thus far done by the assistant editor and his staff has resulted in certain definite plans of procedure. A list of topics for the entire encyclopaedia has been assembled and tentative plans made for the treatment and for the space valuation of each topic. It has become clear, through the actual analysis of material, that the present divisions between the social sciences lose their distinctness and rigidity. The assistant editor predicts that when the encyclopaedia is written no one will be able to determine what proportion of the total space has gone to each science. The content of the work and the method of dealing with such allied fields as art, philology, and religion remain to be definitely worked out; but the approach is through the topics to be included rather than the branches of knowledge into which they might be expected to fall. Compactly organized topics are planned, instead of extended discussions of whole phases of a subject; and the typical article will be brief, ranging perhaps from 500 to 5,000 words. To give unity, an extended introduction is proposed, which will include, among other topics related to the plan and purpose of the publication, (1) a history of the social sciences, analyzing by periods from the time of the Greeks the chief content, the institutional situation, the general movement of thought, and the methods employed; (2) an analysis of terminology, historical and comparative; and (3) a rigorously selected bibliography.

As an alternative to having the bulk of the work done by the staff,

or, on the other hand, to assigning it in large sections to editorial contributors who would be expected to sublet the actual composition of the several articles to others, the plan is to make assignments directly from the central office. The method is a laborious one, but it is believed that it will tend to render the whole enterprise more truly coöperative and to secure better collaboration of the authors in thinking through the relations of the sciences and the evolution of social scientific ideas, and in other phases of the undertaking in which joint effort is essential. The expectation is that assignments will have been made for the first two volumes early in 1928, and the appearance of the first volume is forecast for the spring of 1929, a little less than two years from the time of the actual inception of the enterprise.

JOHN A. FAIRLIE.

*University of Illinois.*

**Social Science Abstracts.** The Social Science Research Council announces plans for the publication of a new monthly journal to be known as *Social Science Abstracts*. These plans are the result of five years of study by a committee of the Council which has canvassed the situation with respect to the needs, resources, and purposes to be served by a comprehensive abstract service in the social sciences. A substantial subsidy has been provided for a period of ten years, until the journal has become self-supporting through subscriptions.

In its report to the Council at Hanover, New Hampshire, in August, 1927, the Committee on Social Science Abstracts stated the need for abstracts in the following paragraphs:

"The founding of the Social Science Research Council is itself a recognition of the fact that leaders in the social sciences are convinced that research in these disciplines is greatly in need of stimulation and direction, and further, that the scholars in these fields should be brought closer together for the consideration and solution of common problems. On the other hand, the deliberations of the Committee on Social Science Abstracts, and much of the information gathered by it, clearly bring out the fact that one great obstacle to the doing of truly scientific research in these fields lies in the tremendous mass of the materials to be considered and in the relative, if not quite complete, lack of appropriate tools for attacking it. There are so many books, pamphlets, and reports constantly being published and so many periodicals, both scientific and semi-scientific, steadily pouring from printing houses both here and abroad, that it is physically impossible for any

one to keep abreast of all the literature, even in his own special field of work. For this reason also, and in making a courageous effort to read what he should, he is likely to take first the publications obviously in his own special field, and for lack of time to do more, to become increasingly oblivious of what is being done in other disciplines upon the same subjects. Thus artificial departmental lines tend to become sharper, and in his mind the social sciences stand as distinct and separate fields.

"To overcome these difficulties, a journal is proposed which will save an almost infinite amount of time and labor on the part of research workers, by giving them in one journal complete citations and short but objective abstracts of all important new materials, and will at the same time draw together the several disciplines by serving them all through one journal based upon some systematic classification and improved by numerous cross-references to the materials in other fields. Other important advantages of such a publication could easily be stated. It will save much duplication and waste of effort, it will apprise the worker of the existence of other specialists working on his problems and stimulate correspondence between them, it will call attention to new methods of research, it will serve as a permanent record of the work already accomplished, and will in many other ways promote the healthy development of the sciences to which it relates."

The Social Science Research Council has appointed an organizing committee consisting of the following scholars, and charged with the responsibility of organizing and establishing *Social Science Abstracts*: Dr. Isaiah Bowman, of the American Geographical Society; Dr. Davis R. Dewey, editor of the *American Economic Review*; Dr. Carlton Hayes, professor of history in Columbia University; Dr. Frederic A. Ogg, editor of the *American Political Science Review*; Dr. Frank A. Ross, editor of the *Journal of the American Statistical Association*; Dr. Clark Wissler, professor of anthropology in Yale University; and Dr. F. Stuart Chapin, chairman, professor of sociology in the University of Minnesota.<sup>1</sup>

To assist the organizing committee, a number of advisory committees have been appointed in the fields of cultural anthropology,

<sup>1</sup> At a meeting of the Social Science Research Council held in Chicago on April 7 this organizing committee was reconstituted as a standing committee of the Council on *Social Science Abstracts*. The membership is unchanged except that Professor Chapin, having been elected editor of the journal for the first year, was succeeded on the committee by Professor Ellsworth Faris, of the University of Chicago, and as chairman by Dr. Bowman. *Man. Ed.*

economics, history, human geography, political science, sociology, and statistics. These advisory committees have been asked (1) to suggest the names of scholars who may be considered for the position of salaried editors and unsalaried consulting editors; (2) to draw up a scheme of classification adequate to the needs of the systematic grouping of materials from their respective fields of specialization within the social sciences.

Since the Council is made up of delegates from the national learned societies in the fields of anthropology, economics, history, political science, geography, sociology, and statistics, the purposes of the Council in its efforts to further coöperative scientific research in the social sciences is best served by devoting the new journal to the fields of cultural anthropology, history, economics, human geography, political science, sociology, and statistics, broadly construed.

*Social Science Abstracts* will be issued monthly throughout the year, and in each issue will appear systematic abstracts of new information published in the fields indicated for the preceding month or months. The journal will be printed in English in this country, but it will attempt to cover the social science literature of the world as originally published in all languages.

Negotiations are under way to establish a satisfactory basis of co-operation with the Committee on Intellectual Coöperation of the League of Nations in working out a *modus operandi* with the arrangements for economic abstracts undertaken by this international organization.

The test of published materials to be abstracted will, in general, be the criterion of *new information*, in the sense of important factual studies and contributions to theory and opinion, in the fields of the social sciences indicated. This will require the careful scrutiny of periodical literature, pamphlets, bulletins, monographs, and books. It is conservatively estimated that the number of abstracts will run to fifteen or twenty thousand titles the first year. The abstracts will be cross-referenced, and annual indexes will be published. It is expected that the first number of *Social Science Abstracts* will be published at the beginning of the next calendar year.

F. STUART CHAPIN.

*University of Minnesota.*

**Research in International Law.** On the initiative of the faculty of the Harvard Law School, a group of Americans has launched a re-

search project in international law planned to deal with the three topics which have been selected by the Assembly of the League of Nations for the agenda of the Conference on Codification of International Law, to be held in 1929.

In 1924, the Fifth Assembly of the League, "recognizing the desirability of incorporating in international conventions or in other international instruments certain items or subjects of international law which lend themselves to this procedure," decided to set up a committee of experts "to prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be the most desirable and realisable at the present moment." This Committee of Experts for the Progressive Codification of International Law, as it came to be called, is composed of seventeen jurists, of whom Mr. George W. Wickersham, president of the American Law Institute, is one. At its first meeting, in April, 1925, it chose eleven topics for investigation, and at its second meeting, in January, 1926, a sub-committee reported upon each of these topics. With reference to some of them, questionnaires were prepared and circulated to the governments of all states. The governments' replies were considered by the committee at its third session in March-April, 1927, and seven subjects were reported as "sufficiently ripe" for consideration by an international conference on codification. Of these seven, three were selected by the Eighth Assembly of the League in 1927 for consideration at the conference which is now envisaged for 1929, i.e., nationality, territorial waters, and responsibility of states for damage done in their territory to the person or property of foreigners.

The three subjects selected were among those approved by the government of the United States, in its reply to the questionnaires, as subjects concerning which "international arrangements . . . would serve a useful purpose and would therefore be desirable." The government of the United States also added that it saw "no insuperable obstacles to the concluding of agreements on these general subjects."

The prospect for a conference in 1929 naturally suggested the desirability of the most thorough scientific preparation. If it is not the first time in history that a diplomatic conference is to be held for the avowed codification of international law, the occasion nevertheless presents an opportunity for disinterested scholars to have their work considered in a way which cannot fail to give it influence. Inspired by the feeling that independent coöperative research by American

scholars and jurists might greatly contribute to the advancement of sound codification of international law, the faculty of the Harvard Law School invited the coöperation of the most active men working in the field to serve as an advisory committee for the organization of such research. Its invitation was accepted by some thirty-five persons, of whom about half are teachers of international law in our universities and colleges.

The necessary financial provision having been made by the Commonwealth Fund, a first meeting of the advisory committee was held in Cambridge on January 7 last. Mr. George W. Wickersham was elected chairman of the committee, and an executive committee was created composed of Messrs. Joseph H. Beale, Manley O. Hudson, Charles Cheney Hyde, Eldon R. James, Francis B. Sayre, James Brown Scott, and George W. Wickersham. It was decided that the research should be undertaken along the general lines followed by the *Institut de Droit International* and the American Law Institute, with a director of research, with a reporter for each of the subjects to be considered by the 1929 conference, and with advisers to assist each of the reporters. Professor Manley O. Hudson was chosen to be the director of research, and the reporters were named as follows: on nationality, Mr. Richard W. Flournoy, of Washington; on territorial waters, Professor George Grafton Wilson, of Harvard University; and on responsibility of states for damage done on their territory to the persons or property of foreigners, Professor Edwin M. Borchard, of Yale University. It is hoped that the reports can be largely completed in 1928, so that they may be available in advance of the assembling of the conference now in prospect.

MANLEY O. HUDSON.

*Harvard Law School.*



## BOOK REVIEWS

EDITED BY A. C. HANFORD  
*Harvard University*

*The Early Life and Letters of John Morley.* BY F. W. HIRST. Two volumes. (New York: The Macmillan Company. 1927. Pp. xxvi, 327; x, 285.)

*James Bryce.* BY H. A. L. FISHER. Two volumes. (New York: The Macmillan Company. 1927. Pp. xiv, 360; x, 360.)

The passing of these two great leaders of English thought and action marks the end of the era of Victorian liberalism, and in their lives and works will be found the best examples and interpretations of its principles of liberty, parliamentarism, and democracy. Both belonged in the category of Platonic statesmen, in whom the broad knowledge of the scholar was combined with the wisdom of the practical man of affairs.

Both of these statesmen have been most fortunate in their biographers. Mr. F. W. Hirst, who has edited the *Early Life and Letters of Lord Morley*, is one of the best known English publicists in the fields of economics and politics. For many years he was an intimate friend of Lord Morley, and he is today perhaps the leading disciple and representative of Lord Morley's philosophy. The present two volumes are devoted to selected phases of Lord Morley's life—to his boyhood days, his college life at Oxford, his journalistic struggles, and his editorial experiences on the *Saturday Review* and the *Fortnightly*. Particular attention is given to his relations and correspondence with the great literary and philosophic leaders of the day—Meredith, Leslie Stephen, George Eliot, Harrison, and John Stuart Mill—and to his political connections with Bright, Gladstone, Chamberlain, and other liberal and radical politicians.

The chapters dealing with Morley's literary and philosophic interests are of much greater value than the purely political chapters. He is here presented to us as "a dashing journalist, ardent rationalist, impetuous radical, and critic of church and throne." During his college days he embraced the rationalistic creed of the scientific and philosophical leaders of the day. For a time he was strongly attracted by the creed of the Comtists, in the fields of both philosophy and religion, but he was altogether too much of a Protestant and disciple of John Stuart Mill to become a convert to the Positivistic creed. With the passing of the years, indeed, he became more tolerant and more

friendly to the church. He was keenly disappointed at the purely materialistic and non-moral tendency of many of the scientific leaders, and at the same time his close political associations with the non-conformists brought him to realize to what a large extent his reform-program was bound up with the spiritual ideals of his Christian friends, even though he never surrendered his rationalist faith. He was especially disappointed at the illiberal or conservative attitude of most of his scientific friends in the field of politics, an attitude which caused him to raise the question as to whether science was not narrowing in its tendencies. Although Morley was strongly radical in his philosophy and had been greatly influenced by the French philosophers, he was essentially English in his political outlook, and was always wary in his judgments and suspicious of all glowing phrases and dogmatic generalizations. Only in the field of economics did he remain a confirmed "fundamentalist." No changes in the economic conditions of England could affect in the slightest his devout belief in the free-trade principles of Cobden and the Little Englanders.

The second volume, dealing with Morley's early political career, is much less interesting and significant. Mr. Hirst succeeds in throwing some new light upon Morley's intimate relations with Spence Watson and Chamberlain and his part in the formation of the Radical wing of the Liberal party. Probably the most original part of the volume is the treatment of the gradual estrangement between the two Radical leaders on the Home Rule question; but the breach, after all, was almost inevitable, owing to the marked differences in the training, associations, and philosophies of the two leaders. Chamberlain was an intense realist, whereas Morley held fast to the principles of the English idealist school.

Mr. Hirst's treatment throughout is most sympathetic and appreciative, even in respect to those aspects of Mr. Morley's thought with which he does not entirely agree. For the most part, he keeps his own social and political philosophy in the background. He prefers to let the correspondence serve as the best and truest interpretation of his master's personality. Only occasionally does he venture to disagree with Morley's views, as in the case of the latter's depreciation of the value and significance of Rousseau's philosophy, and the criticism in this case, it will be readily admitted, is so justly and ably expressed that one is almost tempted to wish that the editor had been more liberal in the expression of his own beliefs. Perhaps in some future volume we may be afforded an estimate by the

editor of the value of Morley's philosophy and of his place in the history of English political theory and practical politics.

Lord Bryce has also been very fortunate in his biographer. The warden of New College is a man very much after Lord Bryce's own heart, for he also has won distinction in the fields of history, politics, and education. Thanks to this similarity of experience, he is able to present to us a remarkably truthful and sympathetic picture of the late ambassador—for to the American public Lord Bryce will always appear as the scholarly representative of Great Britain at Washington rather than as the juristic English statesman.

Although Morley and Bryce had much the same social background, grew up in the same Oxford atmosphere, belonged to the same political party, and served in the same ministries, they were none the less strikingly different in their general outlook on life. The difference was much more than that between the philosopher and the jurist, between the scientific rationalist and the student of liberal institutions, and it reflected in truth a fundamental difference in their religious convictions as well as in their foreign associations. The distinction between the two statesmen in many respects is similar to that of their great prototypes, Hobbes and Locke. Morley was undoubtedly the greater speculative thinker, but like Hobbes he drew much of his philosophy from across the Channel and maintained the closest relations with the Continent. Bryce, on the other hand, like Locke, was consistently British in all his traditions and thoughts. He was a true son of the manse, both in faith and in politics.

The life of Lord Bryce will doubtless make a stronger appeal to the American public.

CEPHAS D. ALLIN.<sup>1</sup>

*University of Minnesota.*

*The Sanctity of Law: Wherein Does It Consist?* BY JOHN W. BURGESS.  
(New York: Ginn and Company. 1927. Pp. vi, 335.)

Beginning with the familiar assumptions of the Austinian or Positivist school of jurisprudence that law is a rule of conduct, obedience to which is enforced, if necessary, by the infliction of a physical penalty, and that the enforcement of penalties presup-

<sup>1</sup> This review is made up of notes which were found among the papers of the late Professor Allin. It represents, perhaps, his last written work; and while obviously neither complete nor in finished form, it has seemed best to publish the notes without revision.

poses a sovereign, which is the very essence of the state, Professor Burgess presents a discourse on history, politics, and law under the title "the sanctity of law." Preconceived notions as to the course which political evolution ought to follow furnished a pattern into which the facts of political history from the time of the Romans to the present day are fashioned to fit. An attempt is made to weave into a connected story sketchy notes and details upon political and constitutional history gathered in the course of years, frequently with little relation to the subject announced. A subsidiary theme throughout the work is the process of nation-forming, in which the natural junction of geographic and economic units with their appropriate ethnic and political factors is regarded as a determining factor. The author desires to explain the advantages of the national state based on the national consciousness of right and the national power for its enforcement. It is through this means that the sanctity of law is to be established, and it soon becomes obvious that the Prussian system of pre-war times is regarded as the ideal national state.

The policies and diplomacy of England are criticised and those of Germany are lauded as in line with idealistic political evolution. While German statesmen and diplomats were directing the affairs of Europe, prior to 1914, so as to place democracy on its proper foundations, geographic, economic, and ethnological, Great Britain, Russia, and France were "sowing the seeds of war and anarchy instead of giving to the states of Europe the boundaries and the organization intended by nature and history" (p. 257).

The Allied governments during the recent war are condemned for thwarting the beneficent plans of the Central Powers for the establishment of an idealistic basis for the maintenance of the sanctity of law, and the United States is charged with a large share of blame for interfering with orderly political progress in Europe. On the misguided diplomats of England and on President Wilson is placed the odium for the further Balkanizing of Europe (pp. 262-267). Only contempt is expressed for the "so-called League of Nations," which is now regarded as the chief agent for maintaining European Balkanization, in that it is giving sanction to the maintenance of twenty-eight states where there should be only eight. The League is criticised as an attempt to form a super-state which, according to the monistic theory of sovereignty, is logically and practically impossible unless existing states are to become mere provinces. Prospects for the peace of the world lie, we are assured, in the "attitude of independent aloof-

ness" of the United States by which, it is believed, the League may be reorganized so as to change it from a super-state to an effective debating society.

The reputation of the emeritus professor of political science and constitutional law at Columbia University is too well established to be marred seriously by such a partisan and biased presentation of the facts of history and of politics. The inadequacy of the narrow and formalistic definition of law which pervades the treatise is constantly emphasized in modern juristic literature, and the author's application of the thesis relative to the influences of geographic, economic, and ethnological factors in the process of modern state-forming leads to absurd results.

But dark as is the portrayal of the demoralization and the almost universal retrogression into which England, France, Russia, and the United States have thrust the affairs of the world, there is one ray of hope in the suggestion that American multi-millionaires may furnish the characters and the money to save human civilization. Fortunately, a large part of mankind is devoting its best efforts to discrediting and to destroying the basis on which the sanctity of law as expounded in this work is presumed to rest.

CHARLES GROVE HAINES.

*University of California at Los Angeles.*

*The American Philosophy of Equality.* BY T. V. SMITH. (Chicago: University of Chicago Press. 1927. Pp. xii, 339.)

*Democratic Distinction in America.* BY W. C. BROWNELL. (New York: Charles Scribner's Sons. 1927. Pp. 270.)

When the president of the American Political Science Association can say with assurance to his audience in a presidential address that our traditional democratic theories are the bonds which restrict the proper development of the science and the art of government by an "atomic theory of politics"—"the postulate that all able-bodied citizens are of equal weight, volume, and value, endowed with various absolute and unalienable rights . . ."—it is surely high time to revise the accepted notion of equality. And, although in that same address we are advised to secure a divorce for our science from a "polygamous companionate marriage" in which it has been living with philosophy, law, and psychology, in order that it may be yoked in holy wedlock to the method of physics, before the decree is made

absolute it may be worth our while as scientists to see what philosophy and psychology have to say for themselves. We owe to law at least the respect for due process which demands that even the guilty shall not be condemned without a hearing.

The first of the two volumes under consideration may serve as a witness for philosophy, an expert witness, considering the author's standing among the philosophers and his previous inquiries into *The Democratic Way of Life*. Furthermore, he is not to be numbered among the philosophers who, as Professor Munro says, when they "cannot account for a phenomenon in any other way, ascribe it to some occult quality in the moral nature of man." Professor T. V. Smith is by way of being a pragmatist, and his interpretation of equality rests upon a functional account of the conditions of coöperation. Here, if anywhere, we ought to get a satisfactory empirical treatment of equality which the scientist might accept without fear of being trailed "in the sublime cloudlands of the *a priori*."

The problem is set with a pleasant historical approach which covers again, but with a fresh perspective, the development of the idea of political democracy in the United States. The doctrine of natural rights is set in its appropriate context of natural law, with very effective citations and some nice illustrations from the "women's rights" and abolitionist movements. It is a real contribution to have shown how great a part the religious dogma of personal immortality of the soul played in asserting equality as a moral ideal, by giving at least one claim for an equality of fact in this respect at least. The impact of evolutionary materialism has rendered this basis less universal, Mr. Smith thinks, making a substitute necessary. At this point the great names of American philosophy pass almost bodilessly across the stage in search of a philosophy of individuality that implies equality. To Mr. Smith, it is clear, they are a procession of shadows in search of a substance.

We are led eventually to a conception of equality like that of John Dewey, but by the avenue of G. H. Mead's addition of the peculiar nature of the speech mechanism in the formation of human habits through which "the individual becomes a social object in experience to himself" (p. 246). This is the empirical account proposed for the "self" which Kantian theory had made, on *a priori* grounds, the basis of democracy.

But what equality can be proved to exist by this empirical method? "While Americans," we are told, "may have upon occasion *felt* them-

selves to be equal, they have never *thought* themselves to be equal" (p. 253). For this feeling Mr. Smith has a pragmatic respect as an order of truth that has worked results in history. No very serious effort is made here to link up equality with liberty, or even to relate political with social and economic equality. Still he is troubled, as a scientific describer of facts, by a feeling that there is some little discrepancy between the claim of equality in political power and the economic disparities which permit two per cent of the population to control sixty per cent of the wealth. He is further troubled by the prospect that the parity of licit and illicit sex contacts in Chicago may be democratically sanctioned as socially regular in coming generations. These are the risks of democracy, it seems, and risks which he is willing to run.

But what of the inherent goodness of equality? Why democracy as an ideal? He concludes that equality is a useful fiction, "functionally useful without being statically true" (p. 270). As a challenge to Aristotle, who proclaimed that men, being by nature unequal, could not with justice be treated as equals, Mr. Smith proclaims that coöperative loyalty to a community depends upon the acceptance of equality. Of progress toward that end in religion, in government, in industry, it is in the last that the slowest steps have come. He admits the difficulty of race, but he finds in biology no insurmountable bars to coöperative equality, either as between individuals or as between races—given the historical growth of coöperation already realized on both planes. As between the interpretation of the constitution as a bar to bold experiments in the extension of coöperation, it is not hard to guess that he leans to the doctrines of Justice Holmes. A nearer approach, although not an absolute attainment of social and economic as well as political equality, he holds to be necessary to the happy and efficient society.

But has not all this definition been grounded upon an *a priori* set of values? How does this theory differ from Stammler's *Theory of Justice*, of individuals treated as ends in themselves in order that the community may be established by "men willing freely?" Even if science told us with the utmost finality that men are not, and never can be, equal in any respect, would not the ideal of political equality be defensible *as an ideal*? And have not political scientists as well as philosophers to take this ideal into account because of its practical importance in any equation into which it enters historically?

In the matter of *Democratic Distinction in America* we are again

on grounds of considerable political import. Is it true that democratic society means mediocrity of standards and personalities, in politics as elsewhere? Mr. Brownell, writing in the literary tradition of the late Stuart P. Sherman, holds that it does not. He finds hope not only in our great men but in a certain simplicity of taste that strips the man to the essentials and measures real distinction more accurately perhaps than the authoritarian tradition of aristocracy. It is all highly literary discourse, somewhat removed from the blood and sweat of any arena, political or other.

W. Y. ELLIOTT.

*Harvard University.*

*The Living Constitution: A Consideration of the Realities and Legends of Our Fundamental Law.* BY HOWARD LEE MCBAIN. (New York: The Workers Education Bureau Press. 1927. Pp. viii, 284.)

The emphasis of this volume is upon certain features of the constitution which current discussion has thrust into prominence; its tone is that of dispelling prevalent misconceptions. It is studded with such expressions as "the truth of the matter is" (p. 3), "the fact is" (p. 17), "there is no glossing the fact" (p. 55), "but the fact is" (p. 121); and on the other hand, "a serious distortion of the facts" (p. 225), "an exaggerated not to say fanciful view" (p. 232), "grossly overstates the case" (p. 234), "this is an extravagant view" (p. 243), "nothing could be more awry with the facts" (p. 254). Sometimes the misconceptions attacked would seem to have been foisted on the reader rather gratuitously. The method is a good one, however, to throw one's results into high relief.

While written primarily for the layman—specifically for "The Workers' Book Shelf"—the volume contains matter of interest also to special students. The thesis that the President should be thought of as a legislator rather than as an executive is urged acutely and convincingly (p. 27, 115 ff.). Among many sensible observations on constitutional prohibition (pp. 28, 66–27, 94ff.), the hint is conveyed that the Eighteenth Amendment will in time not improbably undergo much the same sort of assimilation to the constitutional system as a whole as parts of the Fourteenth and the Fifteenth Amendments have already undergone (see p. 28). Even better is the criticism visited upon the late Professor Dicey's formula for the apportionment of powers in a federal system: "Whatever concerns the nation as a whole should be placed under control of the national government" (p. 67).



As Professor McBain retorts, "There never was a system embodying a substantial degree of federalism in which the states were deprived of control over all matters that might easily be said to concern the nation as a whole." In other words, federalism is a highly artificial arrangement, and never more so than in the United States today. Elsewhere (pp. 180, 194) occurs an interesting and moderate discussion of the recent decision of the Supreme Court in the Myers case (272 U. S.) in which the Court gave the President *carte blanche* in the matter of executive removals. The attitude taken, however, is perhaps a little too complacent. As Professor McBain has earlier remarked, "To conceive the President as the general manager of a vast administrative organization with his hand of control resting day by day upon all of its ramifying parts is to imagine a vain thing" (p. 119). Yet this is very much the way that the Court's opinion in the removal case does conceive the President.

At other points Professor McBain has been less successful in his onslaught upon current fallacies and has himself fallen into some confusion. The contention (p. 15) that the unwritten British constitution "is due less to peculiar institutional genius than to historical accident" appears to confound the question of form with that of content. The assertion (p. 39) that "What the national government elects to do it may do legally"—the Supreme Court being an organ of the national government—is wilfully paradoxical; while the contention (p. 40) that federalism is not vanishing "or even weakening" in the United States in any marked degree seems to be substantially contradicted on other pages (pp. 56-59). Nor is the distinction drawn (p. 74) between provisions of the bill of rights which arm the individual against the government and those which arm him "for the defense of his rights against the rights which the government attempts to assert in behalf of individuals" more than precariously based upon an indefinite conception of "rights." On which side of the line, for instance, would Professor McBain classify a decision overturning an act of the legislature which attempted to cancel existing debts?

A few factual errors may be noted. The doubt cast upon the inquisitorial powers of congressional committees (pp. 29-30) is not substantiated by the decision in *McGrain v. Daugherty* (273 U. S.). The statement (p. 32) that a statute is for purposes of judicial interpretation "completely severed" from the record of investigations of records and debates attending its enactment overlooks such cases as *Board of Trade v. Olson* (262 U. S.). The assertion (p. 50) that New York

could not ban the sale of meat packed under unsanitary conditions in Chicago ignores such cases as *Plumley v. Massachusetts* (155 U. S.) and *Smith v. St. Louis and S. W. R. Co.* (181 U. S.). The implication (p. 96) that writs of assistance were legal in 1761 fails to take account of English cases during the years immediately following (see Broom, *Constitutional Law*, pp. 522-609). The statement (p. 199) that "there is ordinarily no smooth sailing to a two-thirds vote in the Senate" for a treaty is contradicted by the statistics (see Wright, *Control of American Foreign Relations*, pp. 252-253). Mr. Wilson's famous fling at "a little group of willful men" was made in 1917, not "toward the end of his office" (p. 225). The Oregon minimum wage law was not overturned (p. 242), but sustained, in 1917 in consequence of the tie in the Supreme Court. The assertion that the famous Sugar Trust case (156 U. S.) was "abominably presented to the Court by the Department of Justice" is at least rendered doubtful by Justice Harlan's dissenting opinion, where the controlling elements of the problem before the Court are fully recognized. On p. 276 Professor McBain cites Mr. Horace Davis' *Judicial Veto* for its presentation of the "opposing view" as to the intentions of the Framers regarding judicial review. Mr. Voliva of Chicago also presents the opposing view regarding the rotundity of the earth. The fact that there are people who insist on debating it does not necessarily prove that a matter is debatable.

The book is written with spirit and zest. One or two errors of diction have crept in. On p. 8 the word "obstreperous" is used in the sense of refractory, and on p. 153 "flaunted" should obviously have been "flouted."

EDWARD S. CORWIN.

*Princeton University.*

*The Business of the Supreme Court; a Study in the Federal Judicial System.* BY FELIX FRANKFURTER AND JAMES M. LANDIS. (New York: The Macmillan Company. 1927. Pp. x, 349.)

The so-called "Judges' Bill" of 1925 effected, on the Supreme Court's motion, an epoch-making curtailment of its jurisdiction, and, over the protest of a few distinguished lawyers, made the exercise of its reviewing powers discretionary with the Court rather than a matter of right in the large bulk of the cases coming before it. This milestone in the Court's history has made such an interpretation of development as Professors Frankfurter and Landis have given us not

only timely but necessary for understanding a problem of which we have doubtless not yet heard the last. The burden of their lucid and thorough exposition is that the quality of the justice administered in any community is directly related to the way in which the community's adjudicating agencies do their work, and to the character and volume of the work which they have to do. The authors have outlined the legislative provisions and judicial rulings which have determined the scope of the Court's jurisdiction throughout its history, and have analyzed the play of circumstance and opinion which has led to abortive or successful efforts to adapt its organization and work to political and administrative necessities. But the Supreme Court is not isolated; as a part of the federal judicial system, its work is bound up with, and its appellate jurisdiction is fed by, the other courts belonging to that system; and consequently much that relates to the organization and business of the latter is inevitably included. The history of the old federal circuit courts, and their relation to the district courts, the difficulty about appeals from the latter to the former when, as often happened, both courts were held by the same judge, the relegation to the state courts until 1875 of suits to assert a federal right when there was no diversity of citizenship between the parties—these and other interesting aspects of the history of the federal judiciary are canvassed with exhaustive thoroughness of detail and citation. But the material has been selected with dominant reference to the central theme, so that much is not touched upon which would be essential to a complete history of the federal judicial system. The book remains, despite interesting digressions, a discussion of the Supreme Court primarily.

"Perhaps the decisive factor in the history of the Supreme Court," say the authors, "is its progressive contraction of jurisdiction" (p. 187). A hundred years ago the Court was still largely a common law court, deciding almost half its cases on points of ordinary commercial or property law. In this respect the comparison which the authors present of the Court's business today with the business of state supreme courts and of the House of Lords is striking. Common law topics had dwindled to five per cent of its business in 1925 (p. 302), as contrasted with over fifty per cent in the House of Lords and over sixty per cent in the supreme court of New York (pp. 304-305). Furthermore, the recent legislation has the effect of excluding from the Supreme Court much of its business relating to the so-called "federal specialties"—bankruptcy, patents, public lands, Indians, and the

like. The effect is to leave the Court almost exclusively confronted with cases involving the distribution of taxing and regulatory authority between the state and federal governments, anti-trust laws, and the state regulation of business enterprise under the police power and the due process clause. This result is in line with the long expressed views of Chief Justice Taft: "The proper and chief usefulness . . . of the Supreme Court is . . . to expound the fundamental law, the Constitution. . . . Any provisions for review by the Supreme Court that casts upon the Court the duty of [making] decisions not of general application and importance . . . render more difficult its higher function which makes it so important a part of the framework of our government" (p. 259, note). The consequence, as the authors point out, is that the business of the Court is more and more coming to be of a different order from that of all other courts, and one of the largest problems of the future is to adapt it to its unique function of dealing in the last resort with questions which are essentially economic and political rather than legal in the old-fashioned sense of the word.

It is only in recent years, however, that the question of the Court's jurisdiction has been envisaged from this angle. The authors painstakingly summarize the century and a quarter of earlier discussion, rich in racy touches of human interest, when for long the major issue was whether the justices should be compelled to go on leading their "post-boy" life of circuit riding. Then came proposals to facilitate the despatch of business—for the overburdening of the Court and the consequent clogging of its docket date back almost to the beginning—including the device of enlarging its membership and having it sit in divisions, a proposal urged by no less a lawyer than Evarts, and resurrected by the American Bar Association as late as 1916. By 1890 the Court had got so far in arrears that it opened its term with 1,800 cases on its docket at a time when its output of decided cases was in the neighborhood of five or six hundred per term. The result was the act of 1891 establishing the circuit courts of appeals as intermediate appellate tribunals.

The account given of the fate of the various efforts and proposals to relieve the Court of its excessive burdens between the close of the Civil War and the passage of the circuit court of appeals act illustrates one of the outstanding values of this book for all students of political science—the light which it sheds on the processes and quality of American legislation. The thoroughness and detail of this account disclose, as would a similar account of the history of any other im-

portant branch of legislation, the enormous slowness of our legislative process, and the character of the obstacles it must overcome. The device of intermediate appellate courts which was finally adopted in 1891 had been proposed in its essential features in 1864, and had been suggested ten years earlier. More than a quarter of a century was needed to induce action on a comparatively simple administrative question of judicial machinery involving no issue of a dominantly political nature and universally recognized as urgently demanding solution. An even more flagrant example occurred in connection with a number of inadvertent errors in drafting in the act of 1891, the correction of which took twenty years. The evil of careless drafting of legislation and of inadequate consideration of the meaning and effect of amendments, particularly in the House of Representatives, is abundantly illustrated throughout the story. An almost unbelievable instance of legislative jugglery, boldly thwarted by the Court, is described at pp. 199-202.

Perhaps the most valuable contribution, all in all, made by the book is its unique account of the increasing attention given by the judiciary in recent years to the mechanics of judicial administration, as evidenced, for example, in the federal system by the establishment of the Judicial Conference, or annual meeting of senior circuit judges. With the growing appreciation that the quality of the courts' work depends on its quantity and proper distribution, there is coming to be a new realization of the importance of adequate judicial statistics and of the desirability of a reasonably flexible judicial personnel capable of being mobilized to prevent congestion at one point in the system while elsewhere there is an unemployed surplus of capacity. But questions of administration such as these do not remain questions of administration; inevitably they raise issues of policy and of politics. Localism is still too strong to tolerate a "flying squadron" of "judges-at-large" which might result in "carpet-bagging" Nebraska with a federal judge from Louisiana; while the proposal, viewed apparently without disfavor by the authors, to relieve the lower federal courts by devolving the enforcement of federal police statutes on the state courts doubtless harbors still more potent political dynamite. The merit of the authors is that they see these implications. They relate their study of procedure and administration to its controlling background.

JOHN DICKINSON.

*Princeton University.*

*Elements of Constitutional Law.* BY BEN ALBERT ARNESON. (New York: Harper and Brothers. 1928. Pp. x, 371.)

The author avows a motive in writing this book. He believes that the Constitution is suffering (1) from the worship of overzealous admirers, and (2) from the "unwarranted attacks" of "poorly informed critics." He expresses the conviction that these sapping influences can be counteracted by a "careful study of the Constitution and of constitutional law," providing this study includes an examination of the development, the strength, and the weakness of the Constitution. "If the Constitution has merits, they should be known and appreciated. If it has shortcomings, these should be faced squarely so that proper and constitutional means may be taken to remedy them" (p. 1).

With these conditions in mind, Dr. Arneson has undertaken the task of preparing an "elementary treatise on the law of the American Constitution" which he hopes will serve (1) as a text in "liberal arts courses in constitutional law" and also (2) as a stimulating book for the general reader who may be "interested in delving a little deeper into constitutional problems than does the average description of our governmental machine." With the exception of the first three chapters, which deal with necessary definitions—constitutional changes, the courts, and the Constitution—each of the succeeding chapters (eleven of them) develops some major topic of constitutional law. In describing the character of federal and state powers, the careful selection of examples adds materially to a clear understanding of the subject matter. Not even a dullard need err therein (see pp. 56 ff.). Whether discussing the regulation of commerce, the safeguarding of personal rights, the nature of the police power, due process of law, or taxation, the author never loses sight of his audience. Abstruse questions are elucidated with apt illustrations which ought to make controverted points intelligible to the thoughtful citizen. Adequate definitions are given of terms such as due process, ex post facto, bill of attainder, and the like. Appropriate sub-topic headings in each chapter should keep the casual reader from becoming confused, and the questions answered and the occasional summary of points developed ought to facilitate clear thinking.

It must be confessed that there are statements in the book which, for the student, might have been more useful if authority had been cited. Moreover, a greater use of court decisions could have been made. Only one hundred and thirty-five cases are cited. In no in-

stance are cases utilized to show the process of reasoning employed by the court in reaching a decision. In important decisions dissenting opinions could have been stated to advantage. It is a question of personal opinion as to whether the author might have summarized the different theories of interpretation developed by the court in deciding social and economic questions. In conjunction with cases, the names of judges might have been mentioned.

Dr. Arneson's book cannot be classed among those which idealize the Constitution, or among those which criticize the courts in their interpretation of the constitutional provisions. He pursues a middle course, aiming at impartiality which, in most instances, he attains with signal success. The findings of the court are set forth with unusual exactness. On disputed points little more than the nature of the objections is given. The reader is required to draw his own conclusions from the array of facts set forth. Notwithstanding the criticisms offered, the reviewer is of the opinion that Dr. Arneson has accomplished his task with remarkable accuracy and success. The book is packed with common sense. It should be productive of sound thinking on the fundamental facts of the Constitution and its development.

JOHN P. SENNING.

*University of Nebraska.*

*The General Welfare Clause: A Study of the Power of Congress under the Constitution of the United States.* BY JAMES FRANCIS LAWSON. (Washington: 1926. Pp. 388.)

Mr. Lawson sets out to prove that the general welfare clause in Article I, section 8, of the United States Constitution "is, what it purports on its face to be, a general grant of unlimited power to be utilized by Congress in its own discretion for the common defense and general welfare of the United States" (p. 2). The implications of this thesis are, to say the least, startling. It forces the author to discard the judicial utterances of a century; it compels him to abandon completely the doctrine of enumerated and implied powers; and it reduces the Tenth Amendment from the great protector of the rights of the states to a mere repetition, in disguised form, of the power of the people to choose their own representatives in Congress. It is evident that if we are to accept this view, our text-books on government and constitutional law will need complete revision to accord with the new theory of federalism it entails.

Many, of course, will sweep aside the argument with the single adjective, "Absurd!" But Mr. Lawson is by no means so easily disposed of. One cannot read his carefully written chapters without being amazed to find such an imposing array of evidence in support of a theory long ago discarded as untenable. The entire field of legal evidence is utilized in building up his case, and it must be conceded that a powerful argument is presented to prove that the traditional conception of the powers of Congress is a sophistry. He has elaborate evidence to show that the framers of the Constitution frequently expressed themselves in support of his view of the meaning of the "general welfare" phrase. He points out the conditions under which the Constitution was established, and insists that they show the necessity of a strong central government to remedy the evils which were rampant. The text of the clause is carefully analyzed in the light of the traditional canons of constitutional construction, and the reader is left with the impression that the chief argument for the doctrine of enumerated powers rests on the use of a comma rather than a semicolon.

The Tenth Amendment would be a mill-stone about the neck of a less agile commentator than Mr. Lawson. It is pointed out that this provision does not contain any additional enumeration of powers. The most that it does is to establish the powers given to Congress by other sections of the instrument. To say that such a provision gave the Supreme Court a supervisory power over the functions of Congress is to ignore the plain object of the amendment in reserving to the people the right to control those functions through the ballot box. It thus appears that the real objection of Mr. Lawson is to the exercise of judicial review by the courts, and not to the attempt to specify certain powers which Congress should exercise. To clinch his argument, the author surveys the baneful effects of judicial control during the slavery controversy, during the reconstruction period, and particularly under present economic conditions. A national child labor law, a federal statute governing elections, uniform civil and criminal laws, a national conservation program, uniformity in marriage and divorce legislation, are among the outstanding necessities which the judges are accused of snatching from us.

It would require an elaborate treatise to present an adequate answer to the argument set forth by Mr. Lawson. Pending the opportunity to prepare such a treatise, two exceptions can certainly be taken to his assumptions. In the first place, the majority of the quotations



presented as evidence of opinion on the part of the framers of the Constitution, statesmen, and jurists, are merely dicta thrown incidentally into the body of a discourse on another subject. As a lawyer, the author is, of course, quite aware of the essential difference between dicta and decision (see p. 31), but his whole case is built upon the failure to recognize that a similar distinction need not be made in any other writings than judicial opinions. As a matter of fact, however, private letters are usually prepared with considerably less care in hewing close to the main line of the discussion than are judicial utterances, and for that reason should be used with even greater care.

The second assumption of Mr. Lawson which seems unwarranted, and which he does not attempt to prove, is that the judicial control of congressional power would be somewhat different if the courts were to hold that our national legislature could make any laws for the "general welfare." The history of the due process clause is quite the other way. There is abundant evidence to show that the more general the clause, the greater the room for judicial expansion. In short, judicial constitution-making seems inevitable in the United States, and it may be seriously questioned if the line between national and state powers would have been materially different if the general welfare clause had not been limited to financial powers.

The argument presented is by no means the only interesting feature about the book. Not to be baffled by the persistent refusal of conservative publishers to venture its publication, the author, with the aid of his wife, set the type, printed the pages, and published the volume. There are remarkably few mistakes for a work published without the aid of professional proof-readers, and, taken all in all, the author is to be congratulated on the physical appearance of his handicraft. There is a good table of cases, but the absence of an index is extremely unfortunate in view of the fact that the volume contains such a wealth of relatively inaccessible material of great value for reference purposes. It is to be hoped that Mr. Lawson's work will have a wide distribution, for there are some splendid passages in it, and the argument which it presents should prove a powerful check upon the prevailing tendency to worship the great god Legal Logic. No one can read the volume without feeling that there is urgent need for some other method of solving our social difficulties than that of splitting hairs over the meaning of words.

RODNEY L. MOTT.

*University of Chicago.*

*The Insurance Commissioner in the United States: A Study in Administrative Law and Practice.* BY EDWIN WILHITE PATTERSON. (Cambridge: Harvard University Press. 1927. Pp. xviii, 589.)

This volume, initiating the Harvard Studies in Administrative Law, selects the insurance commissioner as a convenient point of attack on problems of administrative law and procedure. Its significance lies, not in its relation to actuarial science, but in its very important contribution to law and practice in public regulation of business conduct.

The enormous range of statutory provisions and judicial decisions which were examined in preparation of this study has been organized in four main sections, dealing, respectively, with the organization and personnel of the insurance commissioners, the scope of their control, their administrative methods, and the control of their activity, both judicial and non-judicial. The book is a mine of hitherto uncollected material illustrative of major problems in the field of administrative law. No one who is interested in such matters as administrative discretion, licensing and revocation of licenses, inquisitorial powers, notice and hearing, administrative and judicial enforcement, and administrative regulations can fail to spend many hours with this volume. Professor Patterson's interests are wide, however, and much of his subject-matter will interest the student of public administration, who, while fundamentally concerned with managerial problems, can never quite abandon enthusiasm for observing the efficient adjustment of law to the conditions of modern industrial and urban life. Professor Frankfurter rightly points out in his general introduction that in administrative law we are dealing with law in the making, with fluid tendencies and tentative traditions; and, further, that administrative law is markedly influenced, not only by the specific interests involved, but also by the characteristics of the responsible administrative agency.

Often at the conclusion of his formal address, a speaker will chat informally with a small group from his audience. So Professor Patterson, having concluded his major study, pauses at the end in a reminiscent mood and writes of some incidental matters of first-rate importance. Among other things, he summarizes his observations on insurance legislation. He finds that it is characterized by a lack of sense of proportion and emphasis, that it tends to be standard-creating rather than abuse-correcting, that it "conforms" actuarially, that it displays hostility to foreign corporations. "Many of the insurance enactments display a profound ignorance that there is any

such thing as administrative law." Artistic draftsmanship was found to be a rarity.

Professor Patterson's observations on insurance officialdom are equally informing. "The commissioners have no settled views, or very few, as to their administrative practices." His questions relating to administrative procedure "evoked surprise, even a politely concealed impatience." The Illinois superintendent seemed "unable to understand what I was driving at," and was obviously chiefly concerned with an impending election in the city of Chicago. The deputies impressed the author as "satisfied bureaucrats."

These matters are, however, incidental and should not be allowed to obscure the importance of Professor Patterson's introduction to administrative law and procedure. The book is of permanent value, quite irrespective of the incessant flux of insurance legislation, and it will be of continuing significance in focusing attention on a neglected phase of public regulation.

LEONARD D. WHITE.

*University of Chicago.*

*The Invisible Government.* BY WILLIAM BENNETT MUNRO. (New York: The Macmillan Company. 1928. Pp. 169)

In this volume are collected a half-dozen lecture essays. Four were delivered on the Jacob H. Schiff foundation at Cornell University in 1926 and two at Pomona College in 1927. Several of them have already appeared in leading periodicals. They make no attempt at a systematic treatment of the subject of "invisible government," but they all relate to forces or influences which affect, from the outside, the formal processes of government. Their quality is primarily literary.

The first essay, "Fundamentalism in Politics," which was originally published in the *Atlantic Monthly* under the title, "The Worst Fundamentalism," is the best piece of popular writing in the field of politics which has appeared in a generation. Many of us, weary of the hokum of politicians and the false profundities of the schools, positively writhed with joy at our first reading of it. It is witty, pungent, realistic. None of the other essays is quite as happy, but all are stimulating. There is nothing new in any of them except their point of view; but that is enough. They are not works of erudition but of criticism—popular criticism. The clarity of Professor Munro's thought, his grip on actuality, makes them worth reading. His incisive trick of phrase

makes them easy to read. He tears the veil from a hundred shams in the course of these one hundred and sixty-four pages. The reader cannot help but enjoy this destruction of unfounded traditions, false idols, empty shibboleths. One of the most suggestive of the essays is a defense of the money power in politics; another exhibits the sectional character of our political divisions; still another explodes the myth of popular sovereignty.

It cannot be said that Professor Munro has anything to offer as substitutes for the things he destroys. The final effect is destructive, not constructive. It is, nevertheless, a joyous bit of iconoclasm. No one is going to agree with all of it. There is none of it, however, which all cannot enjoy, except of course the solemn pundits of every faction whom the dislocation of their favorite formulas must naturally distress.

THOMAS H. REED.

*University of Michigan.*

*Party Principles and Practical Politics.* BY STUART LEWIS. (New York: Prentice Hall, Inc. 1928. Pp. xii, 523.)

It seems to be the consensus of opinion among politicians that books written by college professors on the subject of politics and political parties are highly theoretical, academic, and of no value because they are not "practical." Politics, they say, is a game which cannot be learned in books. The college graduate who would go into politics must first, if he accepts their advice, forget all that he has learned in books. These criticisms are a severe condemnation of the usual courses on political parties, especially in so far as they may be designed for the budding politician. There is undoubtedly much justification for the scoffing of the "practical men." Politics as described in the books is often at wide variance with politics as actually practiced. What is needed is a more realistic treatment of the subject by persons who have had first-hand experience, and who are able to analyze and describe the forces and the technique. Several of the text-books on political parties have, as a matter of fact, been written by men with long experience in politics; but these have not been read by the professional politician.

A course on political parties should stimulate the interest of the student in politics; it should provide him with an intimate grasp of the technique, an understanding of the underlying forces, as well as a familiarity with the machinery and institutions; and it should describe

in detail the arts of the politician, the qualities and methods of political leadership, the psychological appeals in campaigns, the use of formulas and magic words, and all the tricks of the trade. Such a course would afford valuable and "practical" training for the embryonic politician, and would be of almost equal value to the person without political ambition who desires to understand what is going on behind the scenes.

Professor Lewis' book is advertised by the publishers as a "practical" treatment of the subject by one who has witnessed the actual mechanics of politics, and the reader is led to expect a realistic and intimate account of the subject. Unfortunately, this promise is not fulfilled. There is nothing from cover to cover which might not have been written by one with only a few first-hand contacts in the field of politics.

In typical text-book style of a previous decade, the first chapter is devoted to a definition of the political party. It would seem that the average college student might be credited with knowing at least what a political party is. If he does not, the following definition would not help: "A political party, therefore, is an organization sponsoring at the polls candidates who are recognized as favoring certain principles, adopting certain policies, and having support from the electorate" (p. 3). The cynic might well ask what principles the Democratic and Republican candidates were recognized as favoring in 1926.

Ten chapters out of a total of twenty-five are devoted to a history of parties. Many teachers would criticize the use of this much space for historical material. An account of the most significant political battles, the sectional and economic alignments, the political leadership of such men as Jefferson, Jackson, Lincoln, Roosevelt, and Wilson, which would offer a background of the political parties of today and a better understanding of practical politics, would be of great value to the student. Nothing of the sort is to be found in these ten chapters. The pages bristle with names, while significant factors that would throw much light upon the history of parties are omitted. The reader is not permitted to escape without being told that Richard Rush was nominated for the vice-presidency by a convention in Harrisburg in 1826, that the Abolitionists nominated Thomas Birney for president in 1844, and many similar facts which do not matter. Numerous errors are to be found in the historical chapters. It seems strange, indeed, that "When President Taft called Congress into special session in 1913 to revise the tariff, little could the Democrats, who had

an adverse majority of 42 against them in the House and were outnumbered almost two to one in the Senate, have realized that they were on the threshold of victory" (p. 120). Ohio did not refuse to amend her constitution to remove the word "white" from the suffrage qualifications in 1910 (p. 162), but in 1912. The grandfather clause was adopted in North Carolina, not in 1907 (p. 161), but in 1900. Nor is it accurate to say that "the negro had no desire for suffrage (p. 160). There were not two political parties (in the correct meaning of the word) in the constitutional convention of 1787 (Chap. IV.).

The convention and the direct primary are treated in two chapters. The state laws on the direct primary are well summarized in certain particulars, but nothing is said of the grave abuses and the boss control which developed under the convention system. The chapter on party organization scarcely mentions the chairman of the national committee, or the precinct captain. It would seem that these offices merit at least some attention.

A great deal of useful information is presented on campaign expenditures. The chapter on corrupt practices contains a valuable summary of the statutes of the several states, but no discussion of the problem in general terms. Proportional representation and preferential voting are unfortunately treated together, and are not clearly distinguished. Throughout the book, facts, names, and dates are marshalled and presented for consumption by the student, but seldom is the matter at hand analyzed and discussed in an informing manner. Such interest as the student might have had in political parties would surely be stifled before the last chapter was reached.

JOSEPH P. HARRIS.

*University of Wisconsin.*

*Public Expenditure: The Present Ills and the Proposed Remedies.* BY HAROLD W. GUEST. (New York: G. P. Putnam's Sons. 1927. Pp. xiv, 217.)

The purpose of this book is to make the point that public expenditures must be considered in the light of the modern disciplines of psychology, sociology, and ethics. Quoting from Veblen, the author states that what is needed is "a perpetual rationalized, calculating revision, so that each article of usage, appreciation, or procedure must approve itself *de novo* [on hedonistic grounds of sensuous expediency to all concerned at every move. . . ." In arriving at his destination the following argument is followed: "The constantly

increasing volume of public expenditures, although not an evil in itself, does constitute a problem of considerable magnitude. A study of the behavior of voters and of members of legislative groups with respect to their thought and action on questions of public expenditure reveals the fact that habit and impulse are the governing forces for the most part. As a consequence, action on questions of proposed outlay is not determined by critical reasoning, critical as to premises as well as to processes, and progress therefore tends to become a cause of public expenditure rather than a result. That it should be both goes without saying. Standards of expenditure, in so far as they definitely exist at all, are built upon the principles and expressed in the terms of individual pecuniary success. This clouds the fact that group values are more than the sum of the valuations of the individuals comprising the group. In order, then, that progress may be intelligently purposive and yet reach its expression through the machinery of democratic government, it is highly essential that the standards of public expenditure shall be formulated with reference to the larger group values rather than according to the narrower individual points of view. Furthermore, conformity to these standards cannot be secured through mere negation of democratic government and through ingenious administrative devices, but must be sought along the painful, difficult road of education as a means of bringing about changes in human attitudes and action toward matters of public expenditure."

While this is not a large book (it contains perhaps 35,000 words), one has the feeling that the theme has been unnecessarily extended to hold the covers apart. The extension, however, has been well done, so that the book is easy and interesting reading, though somewhat overloaded with sparkling quotations and erudite footnotes. The quotations are hardly necessary in the hands of one who himself is so facile in turning off well rounded phrases and epigrammatic observations. The authoritative sweep of Professor Guest's dogmatism is tempered by the modesty of his opening and closing chapters. Any one who ventures to make practical applications, in the field of public finance, of the tentative conclusions of modern psychology and sociology is entitled to charitable consideration. It is a needed exploration.

In dealing with the measurements of government service—and this is the crux of the problem, as the author himself states—there is room for a more careful analysis. This might well begin with the

general outline of the field which was advanced by A. E. Buck in the *National Municipal Review* of March, 1924, which seems to have escaped Professor Guest's attention. Mr. Buck states: "Both from the standpoint of better budget planning and the proper evaluation of the functions of government, there are three things that it is desirable to measure. These are as follows: (1) the purchases, that is, the services, commodities, etc., which are bought by the government to carry on its work; (2) the operation of governmental departments and agencies; and (3) the actual results of departmental and institutional service. In other words, these three things have to do, first, with what the government buys; second, with how it uses what it buys; and, third, with what follows or results from the use. We need, therefore, methods for three types of measurements, namely, (1) measurement of purchases, (2) measurement of work, and (3) measurement of results."

The least fortunate part of the book is that dealing with the growth of expenditures, especially the statistical table on page 33 which shows the federal expenditures from 1840 to 1924 corrected by two index numbers—the first of which runs from 1840 to 1890 with 1860 as the year of reference, and the second of which runs from 1890 to 1924 with 1913 as the year of reference. The author is evidently unacquainted with Clarence Heer's *Post War Expansion of State Expenditures* and with Donald Davenport's *Cost of Government, Land Value and Population*, both of which would have enriched his material.

The final chapter entitled "Means of Control of Public Expenditures" recites the well-worn efficiency program, though not in such terms that the uninitiated would profit much from the statement; and it winds up with the need for more intelligence in the electorate, the scientific attitude, eugenics, education, and good citizenship.

This is a good book for collateral reading and seminar use. It makes a valid argument with regard to the social features of government expenditures and raises many points for discussion.

LUTHER GULICK.

*National Institute of Public Administration.*

*State Security and the League of Nations.* BY BRUCE WILLIAMS. (Baltimore: The Johns Hopkins Press. 1927. Pp. x, 346.)

The problem of security has been at the center of international thought since 1914, and security from war at the center of attention since the armistice. But the attention bestowed upon it has been



military, diplomatic, political—the attention of the statesman, politician, publicist, rather than that of the scholar. The origin and work of the League of Nations have a central place in the discussion of the problems of security. It is one of the fruits of the passing of the acute phase of the domestic political issues that centered about American membership that we may now have scholarly discussions showing genuine detachment.

Such a discussion is that of Bruce Williams in the Albert Shaw Lectures on Diplomatic History given in 1927 at the Johns Hopkins University. He seeks to “review the attitude of states toward some of the juristic relations set up by the Covenant of the League of Nations,” in the hope of throwing “some light on the future development of the international legal order” (p. 120).

After a judicious and penetrating survey of the legal concept of the fundamental right of states to existence, the discussion turns principally upon Articles 10 and 16 of the Covenant—their meaning, efforts at interpretation, amendment, and future prospects. Efforts to amend and interpret the articles, and the positions “assumed by certain states toward the nature and scope of the obligations contained therein was not such as to reassure the members of the League primarily concerned with the problem of security. In fact, the outcome of the whole proceedings had emphasized the indefinite character of the guarantees provided in the Covenant, and had revealed the difficulties of organizing through the existing machinery of the League a definite scheme of mutual assistance. . . . The activity of various states during this period in seeking special alliances outside the League was sufficient evidence that the provisions of the Covenant were considered inadequate as security measures, and that specific guarantees and determinate forms of assistance were still the considerations uppermost in many quarters” (pp. 151–153). The failure to find security within the Covenant also blocked the pathway to disarmament.

Inability to find a satisfactory elucidation of the actual phrases of the Covenant led to the Draft Treaty of Mutual Assistance. That instrument represented an effort to expand the principles embodied in Articles 10 and 16 and make them concretely effective. The Covenant assumed the transference of the concept of penalties for violation of rules from the national to the international sphere, but it did not provide for its detailed application. The Draft Treaty was designed as a partial solution of that problem of detailed application.

It proposed to increase the authority of the Council, which was to "render a decision whether the crime of 'aggressive' war had been committed" (p. 178). It emphasized, to the fullest extent in League history, the reliance upon material guarantees of state security, and envisaged a series of partial treaties among the security-seeking states. For many reasons, chief among them unwillingness of several member states to assume greater or more explicit obligations than those involved in the Covenant, the Draft Treaty failed to secure recognition as an adequate answer to the security problem, and it was shelved. The Locarno agreements subsequently embodied the principle of mutual assistance, but the Locarno agreements "are confined to a region of the manifestly common interest of the states concerned" (p. 232), and they involve, furthermore, the principle of compulsory arbitration.

After the failure of the Draft Treaty of Mutual Assistance, the emphasis shifted from material sanctions, and effort was concentrated on the development of peaceful procedure and on advancing the reign of law in the community of nations. The Protocol for the Pacific Settlement of International Disputes was the result. Its general object was the abolition of aggressive war; its methods, the stimulation of acceptance of the compulsory jurisdiction of the International Court of Justice and the development of the principles embodied in Article 15 of the Covenant. It also sought to identify automatically the party guilty of aggression. But the British government was unwilling to accept it.

The Protocol failed partly because international jurisdiction seemed to threaten domestic jurisdiction. "The adjustment of this problem of the category of interests which should be left to the reserved domain of states, and those which are the proper subjects of international control, presents the real test of the capacity of nations to effect a peaceful ordering of their relationships" (p. 243).

Professor Williams has written in a constructively critical spirit, with admirable detachment and a sure sense of proportion. The foreground is brought into perspective by a sound knowledge of the history of international law and a sane political philosophy. The writing is marked by clarity of both reasoning and expression. The book is heavily documented, both in the text and in annexes. It is a fruitful and welcome addition to scholarly comment on the implications of the League of Nations for the creation of an orderly international society.

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*American Foreign Policies: An Examination and Evaluation of Certain Traditional and Recent International Policies of the United States.*

BY JAMES WILFORD GARNER. (New York: New York University Press. 1928. Pp. viii, 214.)

This book by a seasoned student of international relations is by no means flattering to recent American foreign policy. The evidence adduced suggests that the United States, since the World War, has pursued a policy of short-sighted and selfish non-coöperation, mingled with frequent discourtesy and continuous aggressiveness against the weak. The method used is quotation, narrative of historical incidents, and comment always moderate in tone. Professor Garner does not intend to draw invidious comparisons between the United States and other countries. He is fully willing to admit that others have had their faults, but in this book he is especially engaged in judging the conduct of the United States by the standard of high idealism so often expressed by American statesmen.

Among the factors influencing our policy, especial attention is given to the hyphenated population and to the Senate's influence on treaty-making which frequently leads to "utter weakness, muddle and delay." The tergiversations of isolationism are discussed with the hope that the numerous departures from it in practice may gradually weaken its hold upon the public mind. The chapter on "Imperialism and Dollar Diplomacy" narrates a career of conquest, usually veiled under moral phrases, as in McKinley's famous remark to a group of Methodist clergymen that he prayed for light on the Philippine question and finally got it in the words "Christ also died for them." The writer notes that the President failed to mention to this group the report just received from Admiral Dewey on the strategic and economic advantages of the islands.

The Monroe Doctrine is considered of extremely doubtful value, in view of the attitude taken toward it by Latin American countries. The American professions in regard to arbitration are set beside an imposing list of cases where arbitration was suggested by a foreign power but refused by the United States. The extraordinary hesitancy of the United States to make arbitration treaties that mean anything and the extent to which it has lagged behind most of the European countries in this respect since the war are also set forth.

The problem of American relations to the League of Nations is treated historically, with attention to the partisan, traditional, and other factors which finally led to America's rejection of the Covenant.

The concluding picture of the present American position in foreign affairs is a gloomy one. We have moved in "sullen and cynical indifference," to use President Butler's phrase, caused "by the drowsy syrups of prosperity." The author hopes it is not too late for the government to arouse itself to a more noble, as well as a wiser, policy.

Though one must recognize the book as primarily the expression of an attitude, nevertheless it contains a great deal of solid food for thought. It usually states the position of the opposition fairly, and the tone is always restrained. In giving the grounds for a particular attitude on foreign policy in such a substantial manner, the distinguished author has done a useful service. Whatever opinions one may have, he will profit by reading this book.

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#### BRIEFER NOTICES

##### AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

Considering that one-tenth of all bills and resolutions passed by Congress are agreed to by conference committees, and that this tenth includes practically all of the really important measures, it is strange that the conference committee as a piece of legislative machinery has not received more attention from writers on American government. The need for a systematic treatment of the subject has lately been met by an excellent monograph, *The Congressional Conference Committee*, by Miss Ada C. McCown (Columbia University Press, pp. 274). The origins and historical development of the device are brought into view; its workings in certain notable instances, e.g., the tariff conference of 1883, are described at length; and a chapter is devoted to comparing the congressional conference committee system with the methods of adjusting differences in France. The book is well documented, though there is no formal bibliography.

A recent addition to the series of Studies in Administration published by the Institute for Government Research in Washington is entitled *The Legal Status and Functions of the General Accounting Office of the National Government* and written by Dr. W. F. Willoughby (Johns Hopkins Press, pp. xii, 193). The important political, legal, and administrative problems arising from the unique position of the General Accounting Office as an agency exclusively controlled by and responsible to Congress are discussed in fourteen chapters. In the

last of these, constructive suggestions are made for clarifying and strengthening the position of the Office, and the codification of the laws affecting its work is urged.

Those who are interested in one of the most controversial topics on American government will find a large number of arguments to support their own individual views, whatever they may be, in *A Federal Department of Education* (pp. lxii, 357), edited by Julia E. Johnsen for the H. W. Wilson Company. Like other numbers of the Handbook Series, this volume includes an exhaustive affirmative and negative brief on the subject, a lengthy bibliography, utterances of public men, and articles both for and against the establishment of a federal department of education.

*The Legal Status of Agricultural Coöperation*, by Edwin G. Nourse (Macmillan, pp. xix, 555), one of the latest volumes in the Institute of Economics Series, illustrates the interplay of economics, legislation, administration, and judicial enforcement and interpretation, and is of value to students of constitutional law, federal government, and administration as well as to economists. Of special interest are the chapters on "Federal Action with Reference to Coöperation," "Restraint of Trade under Recent Coöperative Marketing Acts," and "Class Legislation and the Rule of Reason."

The Institute for Government Research has recently issued, as No. 48 in its series of Service Monographs, a volume on *The Office of Indian Affairs* (pp. 591), by Laurence F. Schmeckebier. The book covers, with great completeness, the history, organization, and activities of this office, but does not go into all the controversial questions. Chapter II of the book will prove especially useful to students of governmental functions.

Albert Perry Brigham's *United States of America* (Oxford University Press, pp. 308) contains a series of interesting and significant essays on various phases of American geography, or, one might say, on the relations of geography to economics, government, education, and the national life in general. Two of these, entitled "The Statehood Complex" and "National Unity," are especially suggestive.

Among recent additions to available elementary text-books in civics is a volume on *American Citizenship* (pp. 367) by Messrs. C. P. Patterson, A. W. Evans, and J. P. Simmons, published by Rand, McNally and Company.

A new edition of C. Ellis Stevens' *Sources of the Constitution of the United States* (pp. xii, 313) has been published by the Macmillan Company. The book has been out of print for some time, and the new edition has been much needed.

#### FOREIGN AND COMPARATIVE GOVERNMENT

Henry Holt and Company have published an American edition of B. G. DeMontgomery's *Issues of European Statesmanship* (pp. viii, 367), probably on the theory that the American public has often shown that it likes to be lectured at by "English visitors" and ought to enjoy a little moralizing about the state of the world from the point of view of an English Tory. After a Brahminical bow to the classic "Theories of the State" as presented to undergraduates at Oxford and Cambridge, we are led by the hand across Europe in search of "The Object of the State." The moral is Mussolini—with a foot firmly planted on bolshevism in Italy, and imitated more or less well by less ideal (more democratic) governments. Although the subsequent observations on the criteria of state interference are somewhat dogmatic on arguable points, and distressingly brief on others, the book is marked by some very trenchant thinking. The difficulties with the proposals involved lie usually rather in the assumptions than in the logical exposition. Mr. DeMontgomery's values are throughout about those of *The National Review*. His examples of the breakdown of pluralism and the various socialisms are widely, if somewhat tendentially, chosen. When he turns to the statesman's duty abroad, after upholding national sovereignty as against a League super-state, and as against the Geneva protocol for compulsory arbitration, he affords some interesting commentaries upon the Tory attitude toward the League, Locarno, etc., which have since been amplified by Sir Austen Chamberlain and Lord Cushenden in practice. Christianity is appealed to in conclusion to save us all from materialism.

*Das parlamentarische Wahlrecht* (Berlin: Zentralverlag, pp. 96), by Hans Anton Bernhard, is unique. It undertakes a comparative analysis of the electoral laws of forty-nine states, starting with Egypt and ending with the United States, thus including practically all the more important countries of the world. Such a descriptive survey loses, unfortunately, most of what it gains *in extenso* through the inevitable sketchiness of the treatment. Nevertheless, the descriptive part is preceded by a brief discussion of the principles involved in such a "comparative" essay. Unfortunately, the analysis is somewhat

marred by a lack of appreciation of the difference between the two kinds of representative government, the parliamentary in the strict sense (England) and the presidential (United States). The author does not take this fundamental distinction into sufficient consideration, it seems; for the influence of this difference upon electoral systems is considerable. But notwithstanding this rather fundamental shortcoming, such a world-wide account of electoral practices will afford instructive suggestions. Since Mr. Bernhard has given fairly well selected bibliographical references for each country, as well as for the general problem, this sketch ought to become a font of "learning" for politicians and encyclopedists.

Some years ago the Department of Historical Research of the Carnegie Institution undertook to collect and to publish all the proceedings of the British parliaments that have a significance for the colonial history of North America and, what is more important, all the notes, minutes, and memoranda that make a part of the same record. To carry out this task it has been necessary to search widely and persistently, not only in printed materials, but also in manuscript sources. The first volume in the series came from the press in 1924; the second appeared early in 1927, and has been published under the title of *Proceedings and Debates of the British Parliaments respecting North America*, edited by Lew Francis Stock (pp. xiii, 564). In the earlier volume the editor was able to cover an extensive period, the years 1552 to 1688; but toward the end of the seventeenth century the interest of the legislator in colonial affairs took on a rapid growth, and the researches for the second volume had to be limited to the reign of William III (1689-1702). It is not necessary to argue the proposition that a series of this sort will be of inestimable value to the study, and to the student, of colonial history and institutions; even the slightest examination of the volumes thus far published produces a conviction that here is an undertaking that is eminently worth while.

L. M. L.

Reminiscences of Englishmen who have been in public life generally make pleasant as well as instructive reading. *Life, Journalism, and Politics* (Stokes, 2 vols., pp. 245, 226), by J. A. Spender, editor of the *Westminster Gazette*, is no exception. The author's career began shortly before the South African war, and the book covers various topics down through 1926. In an interesting chapter on "Politics and Progress" Mr. Spender reaffirms his faith in Liberalism and also

expresses the opinion that the "master problem of our times" is to "harness opinion to knowledge and steady the emotions of the multitude with experience and science." "More and more one's mind revolves around the problem, and I think I see some light in an analogy from the law courts. There, when counsel have presented their cases, there is a judge to sum up, to simplify the issues and present them fairly to the jury. In politics there is nothing between counsel and jury." To fill this gap, the author suggests as "a regular part of the machinery of government a permanent body, railed off from politics, with the best brains at call, whose definite business it shall be to issue periodic reports on the economic condition of the country, and to bring all possible light to bear on proposals immediately before it"—in other words a plan similar to that of another scholar in journalism, Walter Lippman, as outlined in *Public Opinion*.

Three books about India have been received of which the most important is a study of the *Relations of Indian States with the Government of India*, by K. M. Panikkar (Martin Hopkinson and Company, pp. 169). This volume deals with such topics as the history of the native states, the growth of central power, intervention in internal affairs by the government of India, the rights of sovereignty, and the constitutional position of the native states. The author's idea of development is for the native states to become "internally autonomous states . . . united under a strong central government." The second, *India Tomorrow*, by Khub Dekta Age (Oxford University Press, pp. 87), is of special interest at the present time because it analyzes some of the problems that will come before the 1929 commission which is to consider the government of India and presumably change it. Dhan Gopal Mukerjii, in *A Son of Mother India Answers*, replies to Miss Mayo's indictment of his country, in a little book (pp. 112) published by E. P. Dutton. Two other books on Far Eastern affairs are *Social Currents in Japan*, by Harry Emerson Wildes (University of Chicago Press, pp. 391), and *China—Where It is Today and Why*, by Thomas F. Millard (Harcourt, Brace, pp. 350). The former is based largely upon a study of newspapers, both native and foreign, and shows the rôle which press and propaganda can play in politics. The latter is a popular account of present-day conditions in China, with emphasis on such problems as relations with Japan, extra-territoriality, foreign interests, Shanghai, and the policy of America in regard to China.



A somewhat revised edition of Sir John A. R. Marriott's *Second Chambers* (Oxford Press, pp. vi, 250) has recently been issued. As in the first edition, the greater part of the volume deals with the House of Lords and the second chambers of the Dominions. The American Senate and the French Senate receive less than twenty pages each, and the upper houses of Germany, Switzerland, and other states are disposed of in a few pages, a paragraph, or a sentence. The usefulness of the book is, therefore, distinctly limited, and, except for the Parliament Act of 1911, recent developments in the structure and functions of second chambers are discussed very briefly.

The memories and observations (1914-1918) of Thomas Garrigue Masaryk as set forth in his book entitled *The Making of a State* (pp. 518) furnish a personal record of the multitudinous activities and plans of the first president of the Czechoslovakian republic. Perhaps the greatest value of this book lies in the fact that it gives us the exact viewpoint of this eminent statesman on many matters of foreign and domestic policy, and also on questions of pure political theory.

*Ce Qu'il Faut Connaître du Fascisme*, by Paul Lombard (Boivin & Cie., pp. 160), is in the main an account of the fascist movement in Italy, with especial reference to its disagreeable attitude toward France. The author contends that fascism belongs to Italy alone and decries the possibility of its gaining a foothold in France. "*La France, peuple majeur, est à mille lieues de ces attitudes théâtrales.*" He cites attempts to introduce the ideas of fascism to his countrymen, but declares, "*Pour la France, le fascisme fait déjà parti du passé.*"

*Documents of Russian History, 1914-1917*, by Frank Alfred Golder (Century Company, pp. xvi, 663), contains a good deal of information which is valuable for those students of European government who desire a more complete understanding of the political developments leading up to the accession of the Bolsheviks to power. The selections include, for example, letters, speeches, extracts from diaries and public documents, on government by the Emperor, the relations of the Duma and the Soviets between March and November, 1917, the first and second All-Russian Congress of Soviets, the Congress of Soviets of the Northern Region, and preparation for the Bolshevik revolution.

Emil Ludwig's two new volumes are a most welcome contribution to the field of historical biography. *Bismarck* (Little, Brown and Company, pp. 661) has already received its share of acclaim and

praise. To enjoy the book thoroughly, at least some knowledge of the period is necessary. The second volume, *Genius and Character* (Harcourt, Brace and Company, pp. 346), contains short sketches of various eminent personages, half of them political, half literary, figures. These include Frederick the Great, Rhodes, Wilson, and Rathenau.

*A History of South Africa*, by Eric A. Walker (Longmans, Green and Company, pp. xii, 623), is a most thorough, minute, and scholarly record and interpretation of events in South Africa from the earliest times down to 1924. The author has tried to be impartial, a most difficult task, and he has the ability to turn a happy phrase which here and there enlivens the steady outpouring of the stream of facts. The book has an excellent bibliography.

The third volume in the introductory history of the British Commonwealth, published by Messrs. G. Bell and Sons, has come to hand. Like the two preceding books in the series, it is entitled *State and Commons* (pp. 164), but in continuation of the earlier volumes it covers the period 1832-1921. The author is S. S. Cameron.

#### INTERNATIONAL LAW AND RELATIONS

*A History of American Foreign Relations*, by Louis Martin Sears (Crowell, pp. xiii, 648), is a readable survey of American diplomacy which relies somewhat more on secondary works than do some similar text-books. Though there are two references to *Die Grosse Politik*, and many to American sources, most of the footnotes refer to the standard biographies and monographs, most of which seem to have been consulted. The treatment is chronological and on the whole well-proportioned, and the volume has been written "with a conviction that the text-book should be a guide rather than a dictionary, that the establishment, on sufficient evidence, of a point of view, is of greater import than the recounting of innumerable incidents of vastly varying importance." Where so much that is interesting is packed between two covers, it may be ungracious to ask for more. Yet the account of the fisheries negotiations in 1782 and 1818 (pp. 33, 156, 164) does not make sufficiently clear the vital distinction between the inshore and the offshore fisheries. No mention is made of the attitude of the southern Whigs toward expansion. And the chapter on Wilsonian diplomacy in the years 1913 to 1917 contains no reference to Colonel House or to the secret treaties between the Allied Powers. A considerable

number of errors may be corrected in a second edition. Incorrect dates are given for the treaties of Morfontaine and San Ildefonso (p. 92), the embargo of 1794 (p. 113), the attack on the *Wyoming* (p. 336), the death of King Kalakaua (p. 415), and the treaty of Ancon (p. 568). Pinckney's treaty was not "signed within one day of Jay's at London" (p. 67). Better proof-reading would have prevented the mis-spelling of the names of Pombal (p. 24), Alamán (p. 240), Von Diederichs (pp. 441, 647), and Bernstorff (p. 552). The line of 31° (p. 46) was not the southern boundary of West Florida. If Canning's American policy had "contemplated a firm stand for the forty-ninth parallel to the Pacific as the southern boundary of Canada" (p. 187), the Oregon boundary dispute might have been settled in 1827; but he rejected that line when Gallatin proposed it. It is not true that the "American government never assumed" the payment of debts due British merchants (p. 39); that Randolph's first instructions to Jay—correctly stated on page 66—stipulated "an abandonment of impressment" (p. 68); that "Godoy agreed in the treaty of San Lorenzo to all the American contentions" (p. 76); or that John Quincy Adams "accompanied his father on the mission to England" (p. 145). "Battle cruisers" are confused with cruisers (p. 579), and the restriction of cruiser armament to guns of eight inches or less is not noted (p. 570). The incorrect statement that Marcy refused adherence to the Declaration of Paris "on the ground that it failed to recognize the principle of 'free ships make free goods'" (p. 286) indicates a failure to distinguish between the immunity of private property from capture at sea, which Marcy proposed, and the principle that "free ships make free goods," which the Declaration of Paris enunciated. J. P. B.

*Diplomatic Episodes in Mexico, Belgium, and Chile*, by Henry Lane Wilson (Doubleday, Page, pp. xvii, 399), is based on Mr. Wilson's experiences during the period (1897-1914) when he represented the United States as minister to Chile (1897-1904), as minister to Belgium (1904-1909), and as ambassador to Mexico (1910-1914). As "a silhouette sketch of life inside the diplomatic corps" (p. vii), the book is delightful. It abounds in anecdotes regarding the *chères collègues*, and at the same time gives one a clear idea of the duties and functions of a diplomatic official at an embassy or legation. The problems which were before Mr. Wilson when he served in Chile, such as, for example, the battleship Oregon incident (pp. 48-51) and the Aslop case (pp. 103-105), are described in an interesting manner. Students of the subject

will find little that is new, but much that is entertaining, in the chapter dealing with the author's negotiations with King Leopold of Belgium regarding the Congo question—"a sensitive subject with the king" (p. 150). One can understand—but not necessarily sympathize with—His Majesty's feelings when President Roosevelt "decided to turn over American interests, which included those of King Leopold" (p. 149), in the Canton-Hankow Railway to the Chinese government. Approximately two-thirds of the book is devoted to Mr. Wilson's detail as American ambassador to Mexico. The author's controversy with President Wilson regarding the alleged "disastrous and amateurish policy" (p. 335) of the Wilson administration in Mexico might have been discussed in a more restrained manner. That Ambassador Wilson had just cause for a feeling of grievance over the visits to Mexico City of the "secret and personal agents of the Washington administration" (pp. 294, 306-308) will hardly be denied by those familiar with the practice of diplomacy. It may be questioned, however, whether the bitter criticism of President Wilson because of his policy toward General Huerta and the President's refusal to act upon the Ambassador's recommendations—described as "remedial and comprehensive" (p. 313)—are wholly justified. President Wilson may have been mistaken in his estimate of and attitude toward General Huerta, but it can scarcely be said that the General "died a sacrifice to . . . over-weening jealousy and egoism" (p. 295). E. C. W.

Volume I of the *Survey of International Affairs, 1925: The Islamic World Since the Peace Settlement*, by Arnold J. Toynbee (Oxford, pp. xvi, 611), points out how Islamic peoples have acted under two main impulses: (1) to free themselves from western dominance, and (2) to adapt and adopt certain elements of western civilization. The facts of ethnic and cultural, in contrast to political, geography are often emphasized throughout this work. Populations have been exterminated or expelled under the urge of developing nationalism, and institutions once held in sacred regard have been overthrown or secularized. The abolition of the Ottoman Caliphate, the rising Islamic opposition to European dominance in Northwest Africa, the relations of Egypt and Great Britain since the declaration of the British protectorate in 1914 involving questions relating to the Sudan and the Nile, the new powers and mandates in the Arabian area, matters relating to Persia before and since the *coup d'état* of 1921, with brief discussions in regard to other Islamic regions, form a well-

rounded survey of one of the most significant changes in the political factors of world relations. The book has several appendices, an excellent index, and maps of the areas to which reference is particularly made, and maintains the high quality of the work of the Royal Institute.

Professor Heinrich Pohl (Tübingen) and Professor Max Wenzel (Rostock) are rendering a distinct service to students of international law and relations throughout the world by publishing a series of detailed studies under the general title of *Völkerrechtsfragen, Eine Sammlung von Vorträgen und Studien* (Dümmler Verlag, Berlin). The monographs received so far include *Welt-Unionen, Haager Friedenskonferenzen und Völkerbund*, by Philipp Zorn; *Die Unterseebootfrage auf der Washingtoner Abrüstungskonferenz*, by Bernhard Skrodzki; *Neues Völkerrecht auf Grund des Versailler Vertrages*, by Heinrich Pohl; *Die Rechtsstellung der Freien Stadt Danzig*, by Otto Loening; *Die avoirs en numeraire [cash assets] im Verträge von Versailles*, by Ernst Keetman. To start such a series by presenting two lectures of the late Professor Philip Zorn was a particularly happy thought. Professor Zorn, it will be recalled, was the fearless advocate of international coöperation in pre-war Germany and did what he could to secure Germany's participation in the Hague conventions. It is interesting from an American standpoint to note that Zorn expresses the belief in these pages that a "real League of Nations" would have to wait for the coöperation of Germany and the United States. Germany has entered, but the United States? Space does not permit a detailed account of the other numbers indicated above, but each one of them will be found worth while. All of them deal with questions of great actuality. The reviewer feels certain that such evaluations of the actual contributions of the League to the development of international law as are contained in the study of Heinrich Pohl will give to American scholars the sympathetic yet critical viewpoint of German colleagues at their best.

C. J. F.

*Shanghai: Its Municipality and the Chinese*, by A. M. Kotenev (Shanghai: North-China Daily News and Herald, pp. xvii, 548), is a most thorough and interesting study of the recent problems of the municipal council of Shanghai in its relations with the public authorities of China, the Chinese residents, and the Chinese administration of justice in the international settlement. There is a full account of the history, practice, and statutes of the municipal council and of the

mixed court, culminating in the establishment of the Shanghai provisional court by the Chinese as a substitute for the mixed court. The appendix includes much valuable material, such as documents relating to the constitution of the republic of China, regulations for municipal self-government in China, the Chinese law of nationality, special Chinese police laws and regulations, the practice of foreign and Chinese lawyers, Chinese fiscal rules, and the rules and procedure applied in the newly created provisional court. Although packed with fact and statutes, the book gives a stirring account of the manner in which the municipal council, with scrupulous care, kept clear of Chinese and international politics. "In effect, the entire history of the evolution of the foreign municipal self-government at Shanghai, except that of the French concession, which is entirely subject to the authority of the French diplomatic representatives in China, is a continual chain of more or less successful endeavors on the part of the council and the ratepayers to liberate the foreign community from dependence upon unsteady international politics" (p. 141). Another unique, but less exhaustive, study dealing with the same part of the world is *The Diplomatic Quarter in Peking: Its Juristic Nature*, by Professor M. J. Pergament, legal adviser to the People's Commissariat of the Union of Soviet Socialist Republics (Peking: China Book-sellers, Ltd., pp. 133). The author defines the Diplomatic Quarter as "a strictly delimited area of land which has been granted by China to the powers signatory to the protocol of 1901 for their exclusive use, and with the right (a) of autonomous administration in the interior; (b) of making the Quarter defensible, and (c) of the maintenance of a permanent guard by each of the powers concerned, so as to effect the defence of the diplomatic legations which are located within the area named, where each of them has been assigned a special lot of land and holds it on the basis of the right of property." Although Professor Pergament regards the situation as an anomalous one and looks forward to the abolition of the Diplomatic Quarter, it is interesting to note that an insert states that on the day the book was published, in April, 1927, an armed Chinese force entered the Diplomatic Quarter and with "open cynical disregard of a fundamental principle of international law," invaded the Russian embassy, thus beginning a new period in the history of the Quarter.

*An Introduction to the Study of International Organization*, by Pitman B. Potter (Century Company, pp. xv, 587), is a third edition

of a book already well known. In the new edition there are many improvements, particularly in the greater objectivity in treatment where new matter has been introduced. Through elimination of some topics and other rearrangement, as well as through condensation of much of the historical discussion, new and valuable material has been included without adding to the number of pages, indeed with some reduction. Naturally, much of the new material is centered about the development of the League of Nations and organizations related more or less closely to the League, such as the International Labor Organization and the Permanent Court of International Justice. There is no attempt to minimize the importance of other, particularly contemporary, methods of international organization. The bibliography has also been brought up to date, though there are fewer references to secondary materials in the main text. As in earlier editions, the appendices furnish valuable illustrative material, and in this edition the Constitution of the International Labor Organization and the Statute of the Permanent Court of International Justice have been added.

There has been, since the World War, a tendency among writers to endeavor to determine whether the predictions as to the future of international law made in 1914-1918 have been fulfilled. The general conclusion is that international law is even stronger than before, though it is faced with new problems and has failed to meet some changed conclusions. As an ardent advocate of the League of Nations, M. Nicholas Politis, in *Les Nouvelles Tendances du Droit International* (Paris: Librairie Hachette, pp. 249), sees some difficulties in organizing international life and at the same time admitting sovereignty. Here, as in the plans to outlaw war, and in the spread of the principles of the treaties of Locarno, the attitude of the United States creates problems. With the development of an international community, there is an increasing and natural demand for codification of international law, and this subject receives more and more attention. This book is an elaboration of the lectures delivered at Columbia University in 1926 in which M. Politis set forth that the international spirit should for the twentieth century be, what the idea of sovereignty was for the seventeenth, the master idea, the end and the inspiration.

*The Danish Sound Dues and the Command of the Baltic*, by Charles E. Hill (Duke University Press, pp. ix, 305), is the only exhaustive analysis of the rise and fall of the Sound dues. The author has brought

to light an immense amount of Scandinavian source material hitherto unknown or superficially treated. He rightly emphasizes the fact that the dues were levied to increase the size of the royal private income (p. 14 *et passim*), and not to further the commercial supremacy of the Danish merchants (p. 54). Not until 1816 were the dues turned into the public treasury. It is unfortunate that the author has been mastered by his material. The course of the narrative is almost entirely obliterated by the procession of facts. Chapters packed with details are left, one after the other, without evaluation or synthesis. No background is presented. There is no attempt to fit the exaction of the dues with the contemporary principles of international law on the subject. Further explanation would seem to be needed, for the tale is a strange one. As a summary of the facts of the subject, however, the book is probably definitive.

P. T. F.

*Die Verbindlichkeit der Beschlüsse des Völkerbundes* (Zürich: Orell Fuessli, pp. iv, 90), by Dietrich Schindler, treats of a question which is of fundamental importance for an understanding of the League of Nations. Are the members of the League legally bound by resolutions of the Council or the Assembly, and if so, to what extent? Schindler, professor at the University of Zürich, makes a distinction between resolutions (*Resolutionen*) which might be legally binding and those which have the nature only of political recommendations (*Vorschläge*). "The close interrelation of law and politics, the unsettled demarcation between legal and political influence in the League of Nations, justifies the present inquiry" (p. 4). Past practice is taken into consideration. What makes this monograph particularly interesting is the application of its results to a number of current problems like the position of those states which do not have a vote in the Council of the League (p. 46). Students of the League of Nations will profit from a reading of this treatise.

*The Immediate Origins of the War (28th June—4th August, 1914)*, by Pierre Renouvin, translated from the French by T. C. Hume (Yale University Press, pp. xiv, 395), is not just another book on the World War, but a penetrating and scholarly study which deserves careful attention. The author's conclusion is best summarized in his own words: "The military provocation of July, 1914, was determined by a diplomatic provocation. The connecting link . . . was furnished by the Austrian declaration of war upon Serbia. Now Germany and Austria were *alone* in desiring this provocation. It is true that they



had reason to feel uneasy; nationalistic movements were threatening the very existence of the Dual Monarchy, and, indirectly, the position of the German Empire. But they would not consent to any solution other than that of violent action. They had agreed upon the program after careful deliberation, having coolly considered all the possible consequences of their action. So far as the *immediate* origins of the conflict are concerned, that is the one fact that dominates all others" (p. 355).

Melvin M. Knight's *The Americans in Santo Domingo* (Vanguard Press, pp. xv, 189) is the first of a series of Studies in American Imperialism to be published under the editorship of Professor Harry Elmer Barnes. Two further volumes are announced on Bolivia and Cuba. Dr. Knight's study concerns itself rather with the facts and dangers of economic imperialism—"dollar diplomacy"—than with direct governmental action.

#### LOCAL GOVERNMENT

*The Bail System in Chicago*, by Arthur L. Beeley (University of Chicago Press, pp. xi, 189), is of interest not only because of the subject with which it treats but also on account of the method of investigation that has been used. The study is the first of the Social Service Monographs published in conjunction with the *Social Service Review*. After a discussion in Part I of the history of the bail system and the problems of its administration, the author attempts in Part II "to determine the extent to which accused persons who are ordinarily committed to jail pending trial, might, without administrative difficulty, be conditionally released in the community." In this latter part of the investigation he has used the sampling method as a means of securing his data, selecting for this purpose every third or fourth name on the list of bailable prisoners, and investigating each case very carefully. From the facts which he has gathered, the author concludes that the bail system in Chicago has completely broken down at many critical points, and he makes certain recommendations for improvement. These proposals include, among other suggestions, adjustment of the form and amount of bail to the nature of the offense, the weight of the evidence, the character of the accused, and the quality of the bail security; greater control over professional bondsmen; making it a misdemeanor to sell, transfer, convey, or incumber property during the period of bailment; making it a misdemeanor to schedule the same property on more than one recognizance;

the creation of a bail commission appointed by and responsible to the courts; minimizing delay in court procedure and increasing co-operation and continuity of policy on the part of the local officials having to do with the administration of justice.

*Juvenile Courts in the United States: Their Law and Procedure*, by Herbert H. Lou (University of North Carolina Press, pp. xvii, 277), is perhaps the most comprehensive treatment yet attempted of the philosophy, history, jurisdiction, organization, and workings of juvenile courts. The author emphasizes the fact that these courts are something more than mere judicial tribunals and concludes that "the juvenile court as a clinic, a social agency, and a legal institution is so far the best instrument ever devised by society to handle children's problems outside the home, the school, and other social organizations. It may become more and more scientific, but its judicial and parental character will continue, at least for generations to come." Appendices include a standard juvenile court act, juvenile court standards, an extensive bibliography, and a table of leading cases.

*La Ville Française, Institutions et Libertés locales*, by Maxime Leroy (Marcel Rivière, pp. 229), gives an historical explanation of the French commune as it is found today, covers the various laws regulating civic life therein, and pleads for greater self-government. Much space is given to the increased sphere of municipal activities, and the author advocates the further coöperation and combination of the smaller communes that they may be able to enjoy the advantages of electricity, hospitals, and other public benefits which would be impossible if left to themselves. This general tendency toward a greater amount of freedom in local self-government is also discussed in an article by Louis Trotobas, "*Les réformes de l'organisation administrative réalisées par les décrets de 1926*," which appeared in *L'Année Politique* for July, 1927.

The League of Minnesota Municipalities has published a most thorough study of *The Law of Special Assessments in Minnesota*, by Harold F. Kumm (pp. 187). The author has summarized all of the judicial decisions and statutory provisions on the subject and has classified his material in such a way as to make it easily accessible and usable. Another study relating to local government in the same state is *Village Laws and Government in Minnesota*, by Harvey Walker (Bureau for Research in Government of the University of Minnesota, pp. iv, 175). Mr. Walker traces the development of village government

in Minnesota from the early town charters down through "the period of special village charters to the present general village laws." Such studies as this are of particular value in bringing to the front a unit of local government which in the past has been sorely neglected.

The publication of Dr. Miller McClintock's *Report on the Street Traffic Control Problem of San Francisco* (pp. xiii, 356), prepared for the Traffic Survey Committee, gives us a comprehensive study similar in form to that made for the city of Chicago and noted in the *Review* for August, 1927 (p. 693). The report includes a study of traffic flow in San Francisco, the growth of traffic density, the physical characteristics of the street plan, traffic accidents, economic factors, pedestrian traffic, the automobile storage problem, traffic police, traffic signs and signals, traffic violations, and administrative organization for future development. As in the earlier report, the necessity of a traffic engineering agency is stressed. In contrasting the two surveys, one is impressed by the fact that the investigations did not find the traffic problem in San Francisco complicated by the same multiplication of local government as in Greater Chicago; nor was it necessary to emphasize the need for a firmer and more systematic enforcement of traffic laws in the courts.

#### POLITICAL THEORY AND MISCELLANEOUS

Americans, whether radical or conservative, will be astonished to learn in *Les Partis Social-Democrates: Leur Rôle dans le Mouvement Ouvrier International Actuel* (Paris: Bureau d'Éditions, de Diffusion, et de Publicité, pp. 302), edited by Eugene Varga, that it is the function of socialists to defend the capitalist system and protect the bourgeoisie, and even more so when they hear that the chieftain of this veritable police squad in the United States is Morris Hillquit. Nevertheless, that is the basic theme of this comparative study of the socialist parties, including the Second International in Germany, France, Belgium, England, Italy, Austria, Czechoslovakia, Poland, Hungary, Bulgaria, Serbia, Rumania, and the United States. What gives this book—brought out apparently by a communist publisher—its peculiar and weird flair is the fact that it is written from the viewpoint of the Third International by a dozen comrades, probably one from each country. But no special responsibility is accepted by any one of them for a particular part. In spite of its violent party bias, the book is of real interest for European politics, as it affords an insight into the intellectual struggle of European radical parties which

is not easily gained by the outsider. The best known to Americans among the collaborators is W. Z. Foster. Due to the fact that the editor has apparently selected similar correspondents in all countries concerned, a story deprecating the future possibilities of social-democratic efforts is the outcome. Taking into consideration the violent bias of the contributors, the detachment of the story is striking. Yet the reviewer is not astonished at that. After all, men of this type are usually highly intellectual, and they have set themselves the task of "knowing profoundly their social-democratic adversary in each country." One of the most useful features of the book is the statistics portraying the importance of the working classes in each country, although great caution must be exercised in interpreting these figures no less than all other statistics.

C. J. F.

*Allgemeine Théorie des Budgets*, by Gaston Jèze, edited by Dr. Fritz Neumark (Tübingen: Verlag von J. C. B. Mohr [Paul Siebeck], pp. xvi, 377), is a German edition of Professor Jèze's well-known treatise *Théorie Générale du Budget*, enlarged by the editor so as to include German budgetary practices. Such an account is of great importance for a better understanding of certain controversial aspects of the more recent reports of the Agent General for Reparation Payments which severely criticized German budgetary practices. These additions alone ought to recommend the German edition to all students of international relations and comparative government no less than to those of public finance. [M. Jèze himself says that the German edition approaches his goal: to give an exhaustive comparative analysis of the budgetary systems of the great modern civilized states. However, the modern American budget is only occasionally touched upon—a fact which is amply explained by the date of the French edition (1922). If someone would now undertake an American edition in which the parts dealing with the United States could be properly enlarged to include not only federal but state practices, he would do a distinct service to American political science. For it is the clear recognition of the political nature of the budget which makes the study of Jèze so valuable to political scientists. "The budget" he says in his first sentence, "is essentially a political act." This is the red thread which runs through the entire study. It was high time that someone emphasized this fact, since all the "classical" writers seem inclined to ignore it. The reviewer hopes that the Institute for Government Research will seize the occasion.

C. J. F.

In *Lawyers and Litigants in Ancient Athens* (University of Chicago Press, pp. xii, 276) Professor Robert J. Bonner presents a simple and entertaining account of the administration of justice in ancient Athens from a standpoint interesting to students of law and political science. This volume adds another to the growing list of books and monographs on related topics already published by Professor Bonner or by others who have worked under his guidance, including Professor G. M. Calhoun's *Athenian Clubs in Politics and Litigation*, Professor Gertrude Smith's *Administration of Justice from Hesiod to Solon*, and Professor H. G. Robertson's *Administration of Justice in the Athenian Empire*. Professor Bonner solves for the uninitiated the paradox that because "the Athenians were a nation of lawyers" (p. 110) no body of case law or binding precedents was ever developed. Of particular interest to students of American politics is the discussion of the "indictment for unconstitutional legislation" (p. 99), and the explanation of why "in Athens the real power was exercised by the professional politicians rather than by the magistrates" (*ibid.*).

*Race Contact*, by Earl E. Muntz (Century, pp. xiv, 207), does not measure up to the importance of its subject. This is partly due to the conscious limitation of its scope to early race contacts, between discoverers and first settlers, largely, and the native populations of America, Africa, and Australia. Problems of interracial relations in colonies, and of race contact within developed civilizations, e.g., the South in the United States, the author does not touch. Another, perhaps less conscious, limitation is one of method: to state a sociological truism or a popular generalization for native character and custom, to support it with miscellaneous instances drawn from old-fashioned ethnology and traders', travelers', administrators', and missionaries' memoirs, to qualify it from similar sources, and finally to restate it in its qualified form. No new conclusions are reached, no new approaches suggested or employed. However, a large trove of observations, of varying value, is presented, some of which will be useful to other workers in the field. Here the value of the book—chiefly antiquarian—ends. It lacks any but the most mechanical form; it evidently owes nothing to field study; it depends on sources mostly looked upon with suspicion by contemporary anthropological science.

P. L.

On the topic of *Sozialpolitik* a voice coming from Germany will always find an interested audience in the United States. In a brief

study entitled *Einführung in die Sozialpolitik* (Berlin: Zentralverlag, pp. 123), Bruno Rauecker undertakes to interpret the history of social policies as the result of the particular humanitarian and political movements of the epoch. Citing Aristotle, Rauecker expresses the belief that *Sozialpolitik* is, and always has been, a true part of "politics." Rauecker maintains that the reason for the pursuit of social policies, i.e., the pauperization of large classes of the people, is ever present. He therefore describes the influence which the political institutions of Greece, Rome, the Middle Ages, and modern times have had upon the conduct of social policies. In the last third of his book he gives a rather careful analysis of the effects of German social policies at the end of the nineteenth and the beginning of the twentieth centuries. Altogether, this is a very useful little book.

The Duke University Press has recently published *The Social Philosophy of William Morris*, by Anna von Helmholtz-Phelan (pp. 207). After a brief but informing account of Morris' early life and of the beginnings of his artistic career, the author shows how Morris' socialism developed out of his art, how his desire to bring about a condition in which everyone would be able to live an esthetically satisfactory life led him to turn to the framing of utopias as well as houses and decorations. Then follow, in successive chapters, an historical sketch of Morris' socialism and a longer analysis of the more important aspects of that creed. Most of this section is devoted to a discussion of Morris' indictment of the present way of life and his conception of a true society. The book is both thorough, within the limits set, and readable. The Duke University Press has presented it in an unusually attractive format.

The Institut für Weltwirtschaft und Seeverkehr at Kiel is publishing a series of lectures, edited by its active and able director, Professor Bernhard Harms. They bear the general title *Kieler Vorträge* (Jena: Kommissionsverlag von Gustav Fischer). Among the more recent issues we find: No. 18, *Die Eisenindustrie in der Welt unter besonderer Berücksichtigung des internationalen Eisenpaktes* (1927), by M. Schlenker; No. 19, *Horizontal und Vertikal im Wandel der letzten Jahrzehnte* (1927), by Manuel Saitzow; No. 20, *Die wirtschaftliche Emanzipation Südamerikas* (1927), by August Skalweit; No. 21, *Technischer Fortschritt und Ueberproduktion* (1927), by L. V. Birck; No. 22, *Ueber die Beziehungen zwischen Aussenhandel und Volkswohlstand* (1927), by W. Susat; and No. 23, *Die Kapitalexpansion*

*der Vereinigten Staaten in Lateinamerika* (1927), by Harry T. Collings. As these titles indicate, the lectures cover a wide variety of economic and semi-political problems of general importance.

The Vanguard Press has added to its series of Outlines of Social Philosophies: *What is the Single Tax?*, by Louis F. Post (pp. xiii, 140); *What Is Coöperation?*, by James P. Warbasse (pp. xiii, 170); and *What is Mutualism?*, by Clarence L. Swartz (pp. ix, 238). This last adds to our list of "isms" a plan of social reconstruction which is regarded as the negative of communism, since it proposes a social system "based on reciprocal and non-invasive relations among free individuals." Mr. Post's book is undoubtedly the most important of the group because it is written by one who was closely associated with Henry George. Two other small volumes published by the Vanguard Press are *Prosperity: A Symposium*, edited by Harry W. Laidler and Norman Thomas (pp. viii, 286), and *Proudhon's Solution of the Social Problem* (pp. xvi, 225), edited with an introduction by Henry Cohen. This latter volume includes a long forgotten article on "Proudhon and the Bank of the People" written in his younger years by the famous journalist Charles A. Dana, and resurrected during the Bryan campaign of 1896 when the New York *Sun* was bitterly attacking the Nebraskan.

One of the most promising methods of relieving congestion in the courts and for obtaining a more expert settlement of business disputes has been the development of commercial arbitration. The leadership in this movement has been exerted by the American Arbitration Association, which has now given further encouragement and impetus to the practice by publishing a *Year Book on Commercial Arbitration in the United States, 1927* (Oxford University Press, American Branch, pp. viii, 1170). This volume describes the organization and purpose of the Association and explains in detail the facilities for commercial arbitration that have been provided by thirty leading trade associations, chambers of commerce, government departments, and legal organizations. There is an exhaustive analysis of the federal, state, and foreign laws on commercial arbitration, and detailed suggestions are given as to the manner of setting up arbitration tribunals.

*Études de Principiologie du Droit*, by Alexander Gorovsteff, has been published in two volumes: the first, on the theory of the object of law (pp. 98), by E. de Boccard, the second on the theory of the subject of

law (pp. 222), by Recueil Sirey. The author has adopted the title from Bierling's *Prinzipienlehre*, and to Bierling he admits that he owes much in regard to his theory of the object of law. His two main contentions are that the subject of law is always man, whether an individual, a collection of men (as in a corporation); or a collection of men who form a state (international law); the second is that the object of law is always the natural liberty of these same subjects of law.

*Essai sur L'Histoire de L'Émigration*, by René Gonnard (Librairie Valois, pp. 368), is valuable, in the first place, because it treats the subject as a whole and one can get a better perspective of our own American problem of immigration by seeing it as part of an age-long and world-wide movement. Besides giving a complete outline of the various emigrations, M. Gonnard has devoted a chapter to the doctrines relative to emigration which are found in various political and economic theorists, such as Bodin, Hobbes, Adam Smith, and Malthus. Especially interesting is his report on France as a country of immigration, and figures are given showing the large number of Italians, Belgians, Poles and other alien nationals now resident in France. The viewpoint of the author is that of an intensely patriotic Frenchman.

In *The Foreign Policy of James G. Blaine* (University of Minnesota Press, pp. 411) Mrs. Alice Felt Tyler gives us a more judicious interpretation of the rôle of the "plumed knight" in the shaping of American foreign policy than any previously written. A figure about whom there were the most violent differences of opinion while still in public life, Blaine has since been either eulogized or portrayed as a charlatan by practically every person who has had occasion to characterize him in biography or history. Mrs. Tyler considers him the ablest secretary of state from Seward to John Hay. But she is brought to this conclusion only after a dispassionate analysis in the course of which her subject's weaknesses and failures are frankly put before us.

In *Three Wise Men of the East, and Other Lectures* (University of Minnesota Press, pp. 240) Professor Arthur J. Todd, of Northwestern University, modestly but engagingly records impressions made upon the mind of a social scientist during a recent visit to India, China, and Japan. The three "wise men" are Gandhi, the saint, Tagore the poet, and Bose the scientist; and the largest part of the volume is devoted to India. A hundred-page analysis of the impact of industry upon the Orient makes particularly illuminating reading.



Professor S. E. Morison's *Oxford History of the United States* (Oxford University Press, 2 vols., pp. xiv, 461; viii, 531) is a delight to read as well as a reliable account of events from 1783 to 1917. Writing primarily for an English public, the author has emphasized our relations with Great Britain. Another book having to do with Anglo-American relations, but of an earlier time, is *England and America, Rivals in the American Revolution* (Macmillan, pp. 192), which is a collection of the lectures delivered by Claude H. Van Tyne on the Sir George Watson Foundation for American History, Literature, and Institutions.

*La Théorie Générale de l'État Soviétique*, by Dr. Mirkine-Guetzevitch (Paris, Marcel Giard, pp. 203), is an analysis of soviet political organization and theory by a former professor in the faculty of law at the University of Petrograd. The author is now a refugee living in Paris and naturally not in sympathy with the régime of Moscow. He is, however, a scholar of standing, and his book is to be commended.

Without attempting to propound a solution, Nathaniel Peffer in *The White Man's Dilemma* (John Day, pp. x, 312) discusses the general economic and social problems of imperialism. The dilemma, as he frames it, lies in the necessity for the white races, as at present organized, to maintain and extend their empires, and their inability to do so without an increasing expenditure of force.

*Socialpsychologie in Auslande*, by L. H. Ad. Geck (Berlin and Bonn: Ferdinand Dümmlers Verlag, pp. viii, 119), is a descriptive bibliography of social psychology covering Italy (13 pages), France (17 pages), England (20 pages), and the United States (56 pages), besides a few remarks about Czechoslovakia, Switzerland, Holland, Poland, Sweden, Russia, Japan, and Argentina (together, 12 pages).

An interesting piece of pre-campaign literature is the biography of Alfred E. Smith called *Up from the City Streets*, by Norman Hapgood and Henry Moskowitz (pp. 347), which has been published by Harcourt, Brace and Company. Written in popular style, the book is an entertaining account of the life and works of New York's famous governor.

*Il Problema delle Riparazioni* (Pavia: Presso La Facoltà di Politica della R. Università, pp. 141) is an analysis, from an Italian viewpoint, of the reparations problem in its relation to the German economic system.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

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### AMERICAN GOVERNMENT AND PUBLIC LAW

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# The American Political Science Review

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Vol. XXII

AUGUST, 1928

No. 3

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## POLITICAL SCIENCE AND THE JURISTIC POINT OF VIEW

GEORGE H. SABINE

*Ohio State University*

In the August, 1926, number of this journal, Professor W. W. Willoughby presented some conclusions regarding the conception of sovereignty and the range of its applicability in political science, together with some interesting suggestions for the clarification of political theory. His article is devoted primarily to an exposition and criticism of the juristic theories of Professor H. Krabbe, and the gist of his criticism is that Krabbe, in common with the translators of his *Modern Theory of the State* and with Duguit, fails to distinguish between ethical and legal validity. Krabbe's attack upon the conception of sovereignty is therefore due to a confusion: The legal supremacy which the analytical jurist attributes to the state for purely legal purposes is taken as including also an assertion of moral supremacy. Accordingly, the fact that a legally valid law may be criticized as opposed to moral sentiment or to public interest is turned into an objection against the view that the state, for juristic purposes, may be regarded as a legally sovereign will. Professor Willoughby implies that clarity can be introduced into the whole discussion simply by avoiding this confusion. The justice or utility of a law is a wholly proper question for the moralist, but it is quite irrelevant to the juristic problem, which concerns merely the legal competence of the agency enacting or enforcing the law. "We find in Krabbe, and also in his translators, . . . that same mistaken idea which is to be

discovered in Duguit, that an inquiry into the idealistic or utilitarian validity of law, as determined by its substantive provisions and purposes sought to be achieved by its enforcement, has a relevancy to, and that its conclusions can affect, the validity and usefulness of the purely formalistic concepts which the positive or analytic jurist employs."<sup>1</sup>

It is not my purpose in this article to defend Professor Krabbe or his translators against the charge of confusion. That is a question upon which readers of the book are entitled to judge for themselves. I wish rather to inquire whether Professor Willoughby's plan for introducing clarity into our thinking about sovereignty will remove the difficulties which many scholars, including Krabbe and Duguit, have felt respecting that concept, and whether the distinctions which he proposes afford a working basis upon which political science can proceed with its various tasks, juristic and other. It is my desire throughout to meet on its own ground Professor Willoughby's claim for "the validity and usefulness of the purely formalistic concepts which the positive or analytic jurist employs," so far as this can be done by one who believes that, as a point of view for political theory, these concepts are neither valid nor particularly useful. The question is, How useful are they, and why are they useful at all?

Before taking up the juristic point of view in particular, however, we may consider briefly Professor Willoughby's plan for clarifying political theory. The essence of this plan, if I have grasped his argument, is to keep clear and distinct a number of points of view from which it is possible to observe and explain political phenomena. "A state may be regarded from various points of view, and as thus variously regarded—sociologically, ethically, psychologically, or juristically—it may be differently defined and clothed with different essential attri-

<sup>1</sup> *American Political Science Review*, Vol. XX (1926), p. 510. On p. 522 the omission of a number of words has completely changed the meaning of a quotation from the translators' Introduction to Krabbe's book, though it does not appear that Professor Willoughby has mistaken the writers' meaning.

butes."<sup>2</sup> The complex subject-matter of politics must be viewed from only one angle at a time, and the special obligation of the investigator is to remain faithful to the point of view which he has chosen to adopt. He may set up such definitions and explanatory conceptions as the subject-matter requires when seen from that point of view, and his scientific purpose is to formulate a set of propositions logically consistent with each other and in accord with the phenomena.

Professor Willoughby does not expand this view of methodology, but I presume it would follow that, if we were to examine two such sets of propositions—about the state, for example, as seen from two distinct points of view—we should find no statement in the one which was exactly identical with a statement in the other; for the point of view adopted would partly determine in each case all the propositions at which the scientist had arrived. It would follow also that no statement in one such set of propositions could be urged against a statement in the other set, because the two would be really irrelevant. They would belong, as logicians say, to different universes of discourse. The only valid and relevant objection against any proposition is that it is contradictory of some other proposition stated in terms of the same postulate or point of view.

Some such view of scientific procedure is not uncommon among students of logic. Probably it owed its currency in the first place to discoveries, such as the non-Euclidean geometries, which brought clearly to the attention of logicians the part that postulates play in determining the results of scientific investigation, and also the fact that postulates are to a considerable extent independent of logical compulsion. In a strictly formal view it is clear that postulates cannot be logically justified, since the deductions made presuppose the postulate and obviously what is assumed cannot be proved. It is possible, therefore, to regard postulates as acts of will rather than of intellect. The scientist freely chooses to reason upon a certain assumption, or, as Professor Willoughby says, to observe the

<sup>2</sup> *Ibid.*, p. 521.

subject-matter from a certain point of view. He may, for example, adopt Euclid's axiom about parallel lines or some other; speaking strictly, there is nothing that can oblige him either way, and another investigator has an equal freedom of choice. In either case, of course, once he has elected to play the scientific game according to certain rules, he must keep strictly within the implications of those rules.

The chief advantage of this conception of scientific method is that it tends to engender self-consciousness about the making of assumptions and also to inculcate a belief in the radical sinfulness of confusion, both scientific qualities of the greatest value. But the degree of clarity that can be got in this way depends upon our ability to mark off precisely the points of view we mean to distinguish. When Professor Willoughby proposes to set off an ethical theory of the state, a sociological theory, a juristic theory, and so on, he seems to imply that we already know what each of these points of view includes; for surely nothing would be gained by referring one unknown to another. In fact, however, this is pure supposition, for the proper points of view to be adopted in ethics, sociology, and scientific jurisprudence are not notably clearer than for political science itself. So long as moralists do not agree on a definition of ethical value—indeed, do not even agree that it can be defined—how is the political scientist to fix upon an ethical point of view with the assurance that he can persuade other political scientists, or anyone else, to agree with him? And the case is not so far different in sociology and jurisprudence. The advantage of making distinctions depends altogether on how clearly we know what we are distinguishing. Professor Willoughby's plan really amounts to handing on a mass of difficulties to some one at least as ill-qualified as the political scientist to deal with them.

The most that can possibly be said for the rigid distinction of points of view in political science is that it perhaps affords a provisional way of carrying on different lines of work. But it can in no case dispense with the need for a progressive clarifying of the points of view provisionally adopted, and in the end

it is nearly unbelievable that this process should not involve the synthesis and relating of points of view quite as much as distinguishing them. A generation ago it might have been worth while to distinguish a physical and a chemical view of matter, but certainly no scientist today would find such a distinction serviceable. In the same way, it would be surprising, to say the least, if the study of the state should remain a congeries of theories formed from distinct points of view with no contacts except identity of subject-matter. But if the political scientist merely postulates his points of view as distinct, so that results in one field are irrelevant to results in another, is he not virtually assuming that they are unrelated? This is clearly a very large assumption in itself and, so far as concerns the case in hand, it is precisely what would not be admitted by the jurists whom Professor Willoughby is criticizing. Rightly or wrongly, Duguit has started his study of constitutional law from a sociological principle, and Krabbe has based his theory of the state on the existence in a people of a certain *ethos* which includes morals and law as species of the same genus. Unquestionably, if these views rest only on confusion, as Professor Willoughby believes, they are wrong. But to start by postulating the different points of view as unrelated amounts to a refusal to experiment with the hypothesis that they may be related, which, on its face, is just as plausible as the contrary hypothesis.

So far, we have not questioned the notion that the scientist makes postulates or adopts a point of view by a sheer act of will. In truth, however, this is a very one-sided view of scientific procedure. The making of a postulate always has its roots somewhere in the history of the science to which it belongs. Even in geometry, certain difficulties connected with Euclid's axiom had been canvassed for centuries before a non-Euclidean postulate finally emerged as the foundation for a new system of geometry. A new point of view is taken up because it holds out the prospect of aid in the solution of problems which the inner growth of the science has made apparent. In practice, therefore, postulation is guided by some conjecture, at least, as to the probable utility or fruitfulness of the point of view

adopted. As a rule, such a judgment of scientific utility means some form of analogical inference by which a fruitful conception is taken from one field of study and adapted to an allied field. And once a point of view has been suggested and applied, it is continually tested by its results. This test of scientific serviceableness is admittedly vague, as compared with the test of logical consistency, but it is none the less real. In the actual course of scientific work a point of view is valued because it seems to open up new and promising lines of investigation and to give hope of progress in the endless task of making phenomena intelligible.

There is no good reason, therefore, why a juristic theory of the state should be set up merely by postulation. On the contrary, there is every reason to ask what precisely constitutes "the validity and usefulness of the purely formalistic concepts which the positive or analytic jurist employs." We may reasonably expect to find that the point of view was in some sense forced upon political science by something in the nature of the facts studied, or even that it was suggested in the first place by analogy with prevailing ideas of what constituted good scientific method. In fact, it can be shown, as I believe, that the fruitfulness of the concepts to which Professor Willoughby refers was due solely to historical circumstances which gave a certain direction to political evolution in a limited period of modern times. If this be true, the suggestion that these formal conceptions can be merely postulated for a whole division of political investigation gives them a false appearance of universality to which they are not entitled. Let us examine, then, the juristic theory of the state, as Professor Willoughby describes it, in order to see whether it was a product of logical necessity or of historical circumstance.

A juristic theory of the state, as Professor Willoughby conceives it, has to do only with the legal frame-work or constitution of the state, and in so far as it is a formal theory, it is concerned solely with the legal competence of the organs of government existing by virtue of the constitution. A formal juristic theory abstracts from all substantive provisions of the law their actual



mode of working, their utility, their justice, their historical origin, and their relation to any class of social, political, or economic phenomena. In other words, the study concentrates upon a single type of value, namely, legal validity or competence, disregarding considerations of fact as well as values other than legal. The only question raised with reference to any agency of government is the kind and degree and limits of its legal power. There is no need to insist upon the exceedingly narrow limits of such an investigation in the whole range of political study, since this limitation is precisely the point which Professor Willoughby urges. We shall see later that to abstract the form of law from the factual content of the situations in which it operates must seriously cripple our understanding of the law itself, but this point may be postponed for the present.

We may grant at once to the analytic jurist that legal competence is a fact, forming one element of any complex of political phenomena, and also that it is useful for many purposes to know what a governing body may legally do. It is true also that what such a body can legally do is often different from what it ought to do as a matter of good policy or of justice, or from what it will in fact do in a given case. Professor Willoughby is absolutely right in saying that these different questions ought not to be confused. The distinctions are useful, and knowledge on any or all of the different points may be useful in analyzing a political or legal situation. The critic of sovereignty certainly has no right to obscure any distinction which is in fact a real part of the phenomena he proposes to study.

But a mere description of legal power as it actually exists does not in itself constitute a formal juristic theory of the state. Such a theory goes on to assume that the state is a single entity and that, when we have isolated its legal constitution, we have a formally logical or consistent system of powers which fully defines the competence of each organ in relation to that of every other organ. The formalistic concepts of such a juristic system are largely devoted to helping out this assumption of formal consistency. The question is not whether there is such a thing as legal competence, a fact which I presume every one would

admit, but whether the understanding of the law demands this process of formalizing competences, and whether the formal consistency of such a system indicates the scientific validity of the method. The points which I wish to make are that formal consistency, in so far as this is actually found in the law and is not merely postulated by the analytic jurist, is easily intelligible as a result of certain utilities and of historical circumstances, and that the postulation of complete formal consistency has no scientific validity whatever but is the remnant of a methodological analogy long out of date. Professor Willoughby refers mainly to two propositions as elements of a juristic theory: that the state is a juristic system, and that, as so considered, it must be conceived to act solely through law. Both propositions require our consideration.

The theory of legal sovereignty can be derived by a very simple logical process, if we unite the notion of a delegation of authority with the assumption that such delegations must be systematic or not mutually obstructive. There is, however, no logical necessity that they should be so united, and it can easily be shown that they are often not united in bodies of constitutional law. The notion of delegation has obviously a wide range of application, and some traces of it are doubtless to be found in any constitution that is at all complex. Perhaps the simplest case is that in which one body is conceived to stand in the place of another for some special purpose. This, for example, appears to have been the theory of the large popular juries in the Athenian constitution.<sup>3</sup> Being chosen by lot, and being of considerable size, they could conveniently be treated by a simple fiction as if they were identical with the whole people for judicial purposes. The authority of the people appears whole and complete in every jury, subject to the condition, of course, that the jury can only express a judgment in the case before it. Subject to this condition, however, it might in effect

<sup>3</sup> That this was the ancient view seems clear from the fact that the orators frequently addressed the jury as "Athenians," and also that the decision of the court was conceived as equally binding with a vote of the ecclesia. See Busolt, *Griechische Staatskunde* (1926), pp. 1150 ff.

reverse a vote of the ecclesia itself, if the case before it involved the charge of securing the passage of an unconstitutional statute.<sup>4</sup> A very similar conception of delegation is to be found in the Greek leagues, where a league government, evidently modeled on the city-state itself, is set up to control the foreign affairs of the member states. The league supersedes the members in the field of foreign relations, and the finality of its decisions is asserted in the most positive terms; but, characteristically, it is supposed to leave the self-government and independence of the city-state quite untouched.<sup>5</sup> The inclusion of sovereign states in a League of Nations is sufficiently similar to suggest that the juristic idea of the Greek leagues is not too primitive or too remote to be worth attention.

If it be assumed, however, that the competence of the different organs is to be systematically defined and guaranteed against conflict, the simplest assumption is that the various lines of derivation lead up to a single delegating source, and that the authority of this first source is underived. The practical reasons behind such a conception are obvious, for in any workable system conflicts of authority must be kept within fairly narrow limits. A unified system of delegated authority is one kind of rather simple organization chart. How vividly conscious men will be of the need for such clear-cut organization, and for translating it into constitutional law, will depend largely upon the magnitude of the dangers that attend conflicts of authority. Had the Greek leagues not been overwhelmed by external interference, it is conceivable that the dangers of particularism might have generated in time a far more highly centralized type of constitution, just as the class struggles of the later republican period at Rome generated in the principate the nearest ancient analogue of the modern sovereign state. It is the period of the

<sup>4</sup> For a description of this form of action see Vinogradoff, *Historical Jurisprudence*, Vol. II (1922), pp. 138 ff.; for other passages see the index, *s.v. graphe paranomon*.

<sup>5</sup> J. A. O. Larsen, "Representative Government in the Panhellenic Leagues," *Classical Philology*, Vol. XX (1925), pp. 313 ff.; Vol. XXI (1926), pp. 52 ff., and especially pp. 68 ff.

sixteenth and seventeenth centuries, however, with the threat of destruction which sectarian religious war brought to European civilization, that made the conflict of authorities a matter of life and death. At the same time, powerful economic motives, connected with the growth of more extended trade, contributed to the closer centralization of the state. The rise of the modern absolute monarchies is a twice-told historical tale. Here we have the historical process that made the political theory of sovereignty fruitful and applicable. The theory of sovereignty is a modern theory, not because it is the modern discovery of an eternal fact, but because the fact itself which it describes is the creation of political evolution in western Europe in the sixteenth and seventeenth centuries.

The political theorists of the period, casting about for conceptions that would clarify the imperative ideals of their time, sought to fructify their philosophy by an analogy with the most progressive branches of science, or at all events with what men believed at that time to be the secret of scientific success. It would be hard to exaggerate the importance in seventeenth-century philosophy of the prevailing admiration for geometry, an admiration which influenced not least men who had little competence in the mathematical sciences. The key to scientific success was supposed to lie in the use of clear and distinct ideas. And the clue to clearness and distinctness was supposed to be, first, an analysis which would yield conceptions so simple and self-evident that they bore the marks of unquestionable necessity upon their face and, second, a process of deductive synthesis in which each step was guaranteed by a simplicity and self-evidence equal to that of the elements themselves. It is the perfect statement of such a scientific process in his *Discours de la méthode* that mainly entitles Descartes to be counted the typical philosopher of the period and made him the spokesman of rationalism and enlightenment for a century after his death.

The same ideas of method dominate the political philosophy of the sovereign state. By analyzing political authority, the philosopher first brings to light the conceptions of sovereign

and subject, and then from the axiom of sovereignty he develops the necessary powers which the sovereign must have. In theory, the process is strictly formal and is supposed to be validated by the logical principle of contradiction; a conception of sovereignty accompanied by a denial of any of its necessary powers is regarded as equivalent to asserting sovereignty and denying it at the same time. This is essentially the conception of Bodin's chapter on the *propria jura majestatis*,<sup>6</sup> and still more clearly the conception of Hobbes' closely related treatment of the powers of the sovereign.<sup>7</sup> The method is not empirical but *a priori*. It moves on the plane of what Professor Willoughby calls "formalistic concepts;" its contempt for fact is as serene as that which made Kant declare that ethics would be quite unaffected if no human being had ever performed a moral act. The validity of the concepts employed was not supposed to rest upon their usefulness or their agreement with fact; they were valid *per se* because they were inherently reasonable. The seventeenth-century thinker assumed that phenomena were reasonable and that hence the reasonable must be useful—an act of faith which was easier in the seventeenth century than in the twentieth. The fact is that the conception of a formal juristic theory of the state was the child of seventeenth-century methodology, as the centralized state to which it applied was the child of sixteenth-century religious strife.

This conclusion may be enforced indirectly if we reflect that the absence of a formal system of legal competences is normal in constitutions other than those of modern Europe, subject in practice, of course, to the fact that a state cannot be too disorganized and yet continue to function. I have already mentioned the notion of delegated authority to be found in the

<sup>6</sup> *De republica*, Lib. I, cap. x. It is true that Bodin wrote before the method described had crystallized. The author of the *Methodus ad facilem historiarum cognitionem* was certainly not exclusively a rationalist in jurisprudence, nor is the author of the *Démonomanie* a representative of the enlightenment. On the other hand, his extraordinary treatment of dogmatic theology in the *Colloquium heptaploemeres* is quite in the spirit of the eighteenth century. See Ad. Franck, *Réformateurs et publicistes de l'Europe, moyen age, renaissance*, pp. 395 ff.

<sup>7</sup> *Leviathan*, Ch. 18.

Athenian jury system and the Greek leagues. Another and somewhat similar example may be found in the republican constitution of Rome, where any magistrate was legally competent to bar the action of any other magistrate having an equal or inferior authority.<sup>8</sup> The constitutional principle of rule by majority is thoroughly contrary to a formally consistent system of competences; it was workable in practice mainly because the exercise of magisterial powers was hedged about by custom, and because the Senate exercised an actual supervision over magistrates much beyond the strictly legal competence of that body. Most anomalous of all, when viewed in the light of formalistic concepts, was the power of veto enjoyed by the tribunes of the plebs. For these officers were not in legal theory magistrates at all, but the representatives only of a class. Yet as a means for the protection of that class they became legally competent to annul the decrees of magistrates, to prevent the assembly from holding elections, or to bar the proposal of a law. Indeed, if a tribune were sufficiently determined, he could utterly paralyze all the organs of government.<sup>9</sup>

The assumption of unity in these conflicting legal powers is clearly out of place. The Roman theory, that ultimate power resided in the people, was not a juristic theory at all. For, aside from the fact that the assemblies did not exercise any such ultimate authority, they did not possess it as a matter of legal competence; it was quite impossible for them to meet or to function except with the aid of a magistrate. The whole folk or people was a community conceived as including both gods and men, and the power of the magistrate depended upon the fact that he alone, through the auspices, had access to the gods. The magistrate's *imperium* was inseparable from the *auspicium*; as Greenidge says, they were the human and divine sides of the

<sup>8</sup> See Bouché-Leclercq, *Manuel des institutions romaines* (1886), pp. 40 ff. Greenidge, *Roman Public Life* (1901), pp. 146 ff.

<sup>9</sup> As Tiberius Gracchus did in 133 B.C. in an effort to force the passage of his agrarian law, which another tribune, Octavius, had prevented the assembly from voting upon; see Greenidge, *History of Rome*, Vol. I (1904), pp. 121 ff. On the constitutional nature of the powers exercised by Gracchus, see Greenidge, *Roman Public Life* (1901), pp. 172 ff.

same power.<sup>10</sup> Consequently, the magistrate's authority was a power against the people—that is, the human part of the community—at least as much as a power derived from them. At a later and more rationalistic stage the Roman lawyers could preserve the traditional principle as a juristic theory only by coupling it with the fiction of an absolute transfer of power from the people to the *princeps*.

As a mere matter of description, there is no great difficulty, apart from the complexity of the facts, in giving an account of the legal powers of the Roman magistrates, and with a due exercise of historical imagination, no insuperable difficulty in understanding how a practical and sensible people might accept their contradictory relations as reasonable and right. The trouble comes if the analytic jurist insists that Roman notions must square with his own formalistic conceptions, which have been constructed to fit modern states. The truth is that until modern times no state was a fit subject for a process of abstraction that would set its legal framework apart from all religious and moral conceptions for purposes of purely juristic analysis. Still less was it formally legal in the sense that its organs made a well-defined system of delegated authorities leading up to a central head.

This brings us to the second of Professor Willoughby's characterizations of a juristic theory, viz., that for such a theory the state is necessarily conceived as exclusively a legal entity. For a juristic theory, therefore, every state is a *Rechtsstaat*. "When it is analyzed by the jurist solely from the legal point of view, it is necessarily considered as a *Rechtsstaat*, that is, as living and having its being in law and functioning solely through law."<sup>11</sup> This necessity Professor Willoughby seems to regard purely as a logical implication of the point of view, rather than as a real attribute of a particular type of state. The juristic theory postulates that a state must have a legal organization sufficiently well organized and sufficiently independent of its

<sup>10</sup> *Op. cit.*, p. 162. See also Fowler, *Religious Experience of the Roman People* (1911), p. 301.

<sup>11</sup> *Loc. cit.*, p. 521.

other aspects to be abstracted and treated as a living and functioning organism by itself.

It must surely be the case, however, that the fruitfulness of this postulate depends less upon its inherent self-evidence than upon its agreement with the facts of modern European political history. The conception of a *Rechtsstaat* is significant, not because only the legal framework of the state is left when everything else is abstracted, but because the state has come to have a legal constitution such that all authority is exercised in the name of law. Let us think for a moment of any feudal state, a state in which the sovereign's power of enactment is limited at every turn by the exemptions and vested interests of privileged individuals and classes, in which offices of state are occupied as if they were private property, and in which even the sovereign's power is less clearly a public authority than an incident of the ownership of land. Would any process of abstraction be likely to yield the jurist a conception which he could reasonably term a *Rechtsstaat*? Jean Bodin had a much clearer perception of the meaning of the conception which he did so much to introduce into political theory. After laying down the principle that it is the chief function of sovereignty *universis ac singulis civibus legem dicere*, he adds, "The latter words [*singulis civibus*] refer to *privilegia*, which pertain to the princes who guide the ship of state with their law. . . . If anyone objects that magistrates themselves often give dispensations from the law and that the Senate at Rome very frequently did this, I reply in the words of Papinian, 'We should give heed not to what is done at Rome but to what ought to be done'."<sup>12</sup> In short, for the sake of an orderly juristic system, immunities and privileges need to be legalized. Bodin was close enough to the process by which something of the sort was being realized to know that facts need not correspond to his principle. The implication was important largely because it might not be true in fact.

<sup>12</sup> *De republica*, Lib. I, cap. x. I have quoted from a Latin edition of 1622, p. 241.



Let us imagine, again, a state in which the process of centralization contemplated by Bodin has been carried through and in which a sovereign has arisen who makes law for his subjects both collectively and severally. But let us imagine, further, that this sovereign exercises his power, as Bodin says, *arbitrio suo*, or with a practically unlimited prerogative. Should we in that case have a state "living and having its being in law and functioning solely through law?" Had James I actually made good the claims for his prerogative advanced in his struggle with Coke,<sup>13</sup> it is hard to believe that juristic theory would ever have conceived the crown merely as an organ of the sovereign or the sovereign as acting exclusively through law.

The conception of a *Rechtsstaat* certainly depends upon historical conditions, though it is not easy to specify with certainty what those conditions are.<sup>14</sup> Perhaps the most necessary is the relatively frequent occurrence of legislation, which in turn will presuppose a state of relatively rapid change in social and economic conditions. It is only where legislation takes place as a matter of course that the enacting of law comes to be regarded as the typical function of the state, or the law itself comes to be clearly distinguished from religion and morals. But frequent enactment is scarcely possible without the development of an organ of government prevaillingly devoted to this function. Professor McIlwain has shown that even in the case of Parliament a clear conception of legislation as its chief function did not gain currency in England until the seventeenth century.<sup>15</sup> Finally, the conception of a state functioning solely through law seems to require that the legislative organ should have gained at least a fair degree of ascendancy over local and customary law, and that the discretion and prerogative of executive officers should have been delimited with a considerable degree of exactness through some sort of enactment. In short, the

<sup>13</sup> See, for example, his address to the judges in Star Chamber (1616), *Works*, ed. McIlwain (1918), pp. 332 ff.

<sup>14</sup> See Lord Acton, *Lectures on Modern History* (1921), pp. 302 ff.

<sup>15</sup> *The High Court of Parliament* (1910), Ch. 4.

notion that the state functions only by law would be meaningless unless the whole machinery of the state had become more or less consciously legalized. It is certainly not true that all government must be of this type. Perhaps no government is wholly so, but only in a brief period of modern history has the state been preponderantly a legal institution. It is no doubt justifiable for a jurist to concentrate his attention upon the legal aspect of such institutions as exist, as historical jurists have done; but it is not justifiable to postulate that these institutions must fulfill the formal requirements that belong to a different period.

To discuss on its merits the whole vexed question of analytical and historical jurisprudence is obviously out of the question. It is certainly true, however, that any suggestion looking toward an exclusively formal analysis of the law is to be viewed with suspicion. For surely a subject like law can never be divorced from historical circumstance, from the eternal shifting and changing of institutions. The ideal of formal systematization commits a juristic theory inevitably to the study of a cross-section of constitutional law taken at some single stage of development; for any serious shift of political authority amounts to an alienation of sovereignty, which is bound to dislocate the formal meaning of the conceptions used, and so lead to a breach of formal consistency. No one has ever succeeded in making formal concepts other than timeless, and timeless categories in a subject so essentially changing as law and politics need to be used with the greatest caution if they are not actually to falsify the subject-matter studied. After all, as Dean Pound has often pointed out, legal reasoning itself has frequently been affected by other than formal conceptions of legality—by conceptions of justice, of the ends to be obtained through law and of its proper function, to say nothing of extra-legal considerations of a factual or utilitarian sort. It is hard to see why a political scientist should be doomed to confusion merely because he refuses to make his view of the law more legal than that of the lawyers.

If the analytic jurist must face the fact that his formal conceptions have not fitted the past, he must also face the possi-

bility that they may cease to fit the present. For it may easily happen that political phenomena will slip through the net of formal conceptions in which he has sought to snare them. Indeed, it might be argued *a priori* that formal analysis, in a subject like constitutional law, will have to be done over for every generation. If such an argument were purely *a priori*, no doubt the jurist might leave posterity to look out for itself. In fact, however, it is worth considering whether the conceptions traditionally used by jurists in analyzing the state, as they came into being to fit a particular stage of political evolution, are not now less satisfactory than they were a generation ago because political evolution is leaving them behind.

Professor Willoughby himself remarks that the analytical jurist has been compelled to recognize a gap between municipal and international law,<sup>16</sup> and indeed it is obvious that the formal conceptions in question can have little fruitfulness in a field where there is certainly no sovereign law-giver and where the fiction of equality between the so-called sovereign parties to agreements has been given up.<sup>17</sup> It is hardly necessary to enlarge upon the magnitude of this exception at the present time, for no one doubts that the juristic experiments now going on in the field of international relations are among the most interesting and significant phenomena that the political scientist has to study. But what is the student to do? Is it either wise or scientific to insist that there is no international law because formal conceptions such as sovereignty do not apply? This surely would be to hold fast to a word at the expense of losing the substance. Certainly the League of Nations has attributes to which we can hardly deny the adjective juristic, just as we can hardly deny the name law to much that was called so in the past, even though it owed nothing to the mandate of a sovereign. No one will deny that the examination of questions concerning legal competence may be scientifically fruitful when applied to the

<sup>16</sup> *Loc. cit.*, p. 517.

<sup>17</sup> See Professor James W. Garner's presidential address, "Limitations on National Sovereignty in International Law," *American Political Science Review*, Vol. XIX (1925), pp. 1 ff.

various organs of the League. Is such inquiry to be met with the objection that the formal conceptions employed by analytic jurists do not fit the case? If so, surely the reasonable answer is that the analysis must still be made, if not with the conceptions in question, then with others which are suitable. Questions concerning the legal competence of international bodies need not be crowded into the four corners of the traditional conceptions by which jurists have been accustomed to systematize constitutional law—a fact which raises the suspicion that such formal conceptions are perhaps less useful than has been supposed for the purpose of presenting the legal competence of organs in the state. In short, sovereignty might turn out not to be an indispensable tool even of juristic analysis.

For understanding the legal relations of organs within the modern state it is true that the conception of sovereignty has had utility, though hardly scientific necessity. Even here, however, it seems as if there were likely to develop shades of competence, or possibly what might be called quasi-competence, which would be difficult to classify in terms of the usual notion of delegation. Some such process of evolution seems to be required in consequence of the great multiplicity of tasks imposed on modern states and the great technical difficulties of the problems involved. We may perhaps imagine the case of a governing organ which originates in the first place by an undoubted delegation of authority, such, for example, as the Interstate Commerce Commission or the Federal Reserve Board. On a strictly legal analysis, there is no doubt that Congress is competent to sweep these bodies out of existence, as it originally created them, or to modify their powers to any extent. It seems certain, however, that the longer such bodies function and the more their functioning becomes interwoven with the economic life of the community, the less likely a legislative body will be to interfere with them in any drastic fashion. From the point of view of the analytic jurist, this abstention is the result of policy, or perhaps of actual rather than legal disability, and of course the jurist has never claimed that the sovereign either can or will do everything that he is legally competent to do. The

question, however, is whether policy or an actual disability will not tend with custom to get in some sense a color of law. Examples of such an evolution will occur to everyone. Would it, for instance, greatly change even the legal status of the electoral college if the constitution were amended to require an elector to vote for the candidate under whose name he had been chosen?

However far the process of legal systematization may go, it is hard to believe that the effects of custom upon the law can ever be eliminated, and certainly the nuances of binding force in customary arrangements are not easy to reflect in formal juristic concepts. It is possible, therefore, to imagine a process of evolution by which a state might be effectively decentralized, even though it were impossible to assign a precise point in its history where a break in legal continuity took place. Formal concepts would merely become progressively inapplicable in describing the actual competence, habitually recognized as legal, exercised by its organs. At all events, many competent observers have believed that they could discern such a tendency to decentralize in modern political institutions, and if they are right it seems certain that in the end analytical jurisprudence must modify its formal concepts to accord with the results of such a change.

If we may take yet another imaginary example—but one for which any historian can easily supply parallels—it is possible to conceive a process by which an institution quite outside the organs of government might attain such strength and permanence that government would be forced to take it into partnership. An advisory body<sup>18</sup> like the German Economic Council, or even a purely private body such as a federation of labor unions, might conceivably exert influence enough to force a government to treat with it on terms approaching equality. Here again the compulsion would be one of policy, and not what the jurist would recognize as legal necessity. In time, perhaps, such a body might obtain a wholly valid legal competence

<sup>18</sup> On the astonishing growth of such bodies in British government, see Professor J. A. Fairlie's article in the *American Political Science Review*, Vol. XX (1926), pp. 812 ff.

commensurate with its actual power; it might become a true organ of government by every test that the jurist would care to apply. Whatever lay between these two extremes would be merely irrelevant for purposes of a formal analysis of the state. But is it likely that even the analytical jurist would adhere so strictly to his formal conceptions? When a code enacts what has long been established in practice, the jurist is as likely as anyone else to chronicle the fact, and indeed he would usually be quite at a loss to explain how the provisions enacted really work unless he took account of their gradual formulation. But in the law, as everywhere else, gradual formulation and strict formalism are radically inconsistent; unfortunately for the analytical jurist, moreover, formulation is more truly the way of life than formalism. Even in an age when legislation takes place wholesale, it would be rash to assume that the profoundest and most far-reaching changes in the law must necessarily occur by enactment, or that institutions may not gradually get a quasi-legal status which in turn is only gradually transformed, if ever, into full formal legality. If this happens, it seems imperative that the jurist should allow enough elasticity in his conceptions not to obscure the facts.

As we have seen, it is the purpose of the analytic jurist to abstract wholly from the factual situations in which the law operates, and from the actual ways in which it operates, the results that it produces and the extra-legal conditions upon which these results depend. A layman may perhaps be allowed to express some scepticism as to whether even the most consistent analyst can really sustain so high a flight of abstraction, or whether his view of the law would be very intelligible if he did so. The analytic jurist himself would agree, I assume, that the operation of the law—its efficacy as a controlling force in human relationships—always depends more or less upon conditions that are wholly extra-legal. The security of many ordinary transactions depends in a very slight degree upon the formal arrangements by which such security is guaranteed. The English pharmacopœia, for example, is statutory; the United States pharmacopœia is the result purely of coöperation

between physicians and manufacturing chemists. Yet an Englishman probably has no greater security against the dispensing of impure drugs than an American. The really effective factor in both cases is doubtless the standard specifications which actually control the practices of the profession. Without these the law would be powerless, and with them the precise legal arrangements by which they are enforced become almost an academic question, at least so far as results are concerned. A jurist doubtless needs to know what the arrangements are, but unless he is interested solely in law as it exists in books, and not at all in law as it is in action, he can scarcely neglect the extra-legal conditions which determine what the law is able to do. What the layman suspects is that the jurist does not really succeed in carrying his abstraction through, but contents himself with a conventional picture of the facts, which is always more or less out of date and inexact. Abstraction of this sort seems not so much scientific as academic.

It is an undeniable fact that profound changes in the working of the law can be effected by extra-legal means quite as much as by legislation and judicial interpretation, as everyone knows who has interested himself in the relations of the law to the actual operations of business and industry. A good illustration may be found in the indirect effects upon the operation of law produced by such work as is now being done on a large scale by the American Engineering Standards Committee.<sup>19</sup> The making of standard specifications for Portland cement or for the "tolerance" permissible in the diameter of steel shafting does not directly affect any laws governing the manufacture of these articles or the law of contract under which purchases are made. But by stating accurately the recognized practices of the trade, such specifications tend to clarify every contract made and to make effective the security which the law of contract is commonly supposed to aim at. Similarly, the formulating of

<sup>19</sup> For a general account of this work see the year-book of the committee for 1927. See also the articles by its secretary, Mr. P. G. Agnew: "How Business is Policing Itself," *Nation's Business*, December, 1925; "A Step Toward Industrial Self-Government," *New Republic*, Vol. XLVI (1926), p. 92.

safety codes for electric wiring, or for the use of grinding-wheels, does not directly enact law, but it gives a degree of precision to the definition of good engineering practice which an ordinance-making body can at once utilize to make the law effective. At the point where legal enactment articulates with the actual processes of industry and of life the jurist inevitably comes face to face with ideas of accepted good practice as embodied in the customs of trade and manufacture and human relationship. Such ideas are indeed largely ethical or sociological or economic, as well as scientific and technological, but they do affect the law, and in many cases a better definition of them is undoubtedly more efficacious in extending legal control into actual human relationships than the prevailing methods of legislation. Professor Willoughby would agree, I believe, that law is an element in a total civilization which is as truly ethical and economic and technological as it is legal. Must he not expect, then, that a legal system abstracted from such a context will be full of raw edges and logical imperfections?

It is difficult to argue for the recognition of logical imperfection or to defend elasticity in conception without seeming to offer an excuse for confusion and ambiguity. Certainly this is not my purpose, for confusion is never defensible. I do not believe, however, that in the end the clarity of political theory can be achieved by Professor Willoughby's plan for dividing it into water-tight compartments. At best, such a plan is provisional; it merely postpones the time when the relations, if any, between its various parts will have to be considered. Worse still, it tends to exempt points of view from criticism with respect to their actual meaning and scientific fruitfulness. The points of view in use in a science at any given time are largely a matter of tradition, and therefore a perfectly fit subject for scepticism. With respect to juristic conceptions, I do not believe that, in the long run and in their actual significance for political phenomena, they can be distinguished from moral and utilitarian conceptions with anything like the finality and sharpness that Professor Willoughby seems to assume. And in respect to the formal juristic conception of the state, the body of concepts



which jurists have been accustomed to use in systematizing constitutional law, I doubt exceedingly whether these can be said to constitute a generally significant point of view at all. The actual legal competence of an organ of government is a useful fact for many purposes, and this fact certainly ought not to be confused with moral, social, or economic facts. But I doubt whether the fact of legal competence really depends in any important way upon the concepts by which analytic jurists have tried to erect competence into a formal system. Historical jurists usually find no insuperable difficulty in describing competence where the formal conceptions manifestly do not apply. In other words, the fruitfulness of formal concepts as applied to modern governments is due purely to an historical mode of development and not to the logical character of the conceptions themselves. They do more or less describe a phase of political development which was undeniably of first-rate importance. Any logical necessity or self-evidence which they may seem to have they owe to a tradition of scientific methodology which goes back to the formative stage of the period in which they belong. Finally, while recognizing all the uncertainty that must attach to a mere estimate of tendencies, I am inclined to believe that the traditional categories of juristic formalism are likely to prove too simple for even the juristic developments that governments now seem to be undergoing.

## BENTHAM ON THE THEORY OF SECOND CHAMBERS

LEWIS ROCKOW

When the problem of second chambers is discussed, we frequently find that interest is confined to the subsidiary question of technique, omitting the prior question, "Why have a second chamber?" It is in the main assumed that second chambers are universally valid, and therefore attention is centered on the varied methods of selection and the extent of functions. If the primary question is raised at all, it is invariably answered by an appeal to experience. It is claimed that almost all modern governments have for a considerable time had bicameral legislatures, and that it is hazardous to disregard a practice that is so nearly universal. Seldom is an attempt made to go beyond experience and to analyze critically this admittedly wide practice. In fact, a bicameral legislature is generally held to be an unassailable and eternal verity, one of the few axioms of political science.

Nevertheless, among the more systematic writers on political science the validity of the bicameral theory is far from unanimously supported. Even a hasty reference to the history of political ideas shows recurrent dissent. Thus, during the period of democratic ferment inaugurated by the French and American revolutions we find unmistakable opposition. To mention some examples, Samuel Adams, Paine, Turgot, Sieyès, and Condorcet were in favor of the unicameral form.<sup>1</sup> The basis of their hostility is well summarized in the famous dilemma of Sieyès. Sieyès has indeed indicated the broad outlines of the objections; and a succeeding century of bicameral experience shows how difficult it is to escape from his vexatious alternatives. To reconcile faith in democracy with the assumption of the value of an effective check is assuredly not an enviable task. At any rate, for our present purpose suffice it to say that bicameralism has frequently been rejected.

<sup>1</sup> H. J. Laski, *The Problem of a Second Chamber*, Fabian Tract No. 213, p. 12.

In no writer, perhaps, do we find as vehement a defense of unicameralism as in Bentham. After the July Revolution in France, when the reconstruction of the French government along more democratic lines was being discussed, the aged Lafayette asked Bentham's advice on the question: "In France, shall we, or shall we not, have a chamber of peers?" Bentham's relations with France had been of long standing. Forty years before, during the early stages of the first revolution, he considered France a suitable field for experiments in the organization of government on the principle of utility. In 1792 the French government, in recognition of his humanitarian zeal, made him a citizen of France. Bentham enjoyed an international reputation, and freely volunteered his services to any government which would aim at establishing legal and political organization on the sacred principle of the "greatest happiness of the greatest number." It is therefore not strange that Lafayette should have sought Bentham's advice. Bentham's reply to the query is his most succinct statement of his theory of the second chamber, although some aspects of the question were briefly examined also in some of his other works.<sup>2</sup>

Bentham's objections to a second chamber can easily be stated. Since the end of government is "the greatest happiness of the greatest number," a legislative assembly, he thought, should be based virtually on universal suffrage. Only then will the aim of legislation be the advancement of the general interest. For a second assembly, in addition to the popular house, there was, in his eyes, no justification; for if a second chamber represents the general interest, it is useless; and if

<sup>2</sup> *Jeremy Bentham to his Fellow-Citizens of France on Houses of Peers and Senates*, 1830. A collected edition of the works of Bentham was published in 1843 in eleven volumes under the supervision of Bentham's literary executor, John Bowring. All reference to the theory of Bentham in this paper is made to this edition. For discussion of Bentham and his followers, see Leslie Stephen's *The English Utilitarians*, 3 vols., and Éli Halévy's *La Formation du radicalisme philosophique*, 3 tom. On the history of the period see Éli Halévy's *Histoire du peuple anglais au XIX<sup>e</sup> siècle*. Mr. and Mrs. Hammond's *The Village Laborer*, *The Skilled Laborer*, *The Town Laborer*, and *The Rise of Modern Industry* are also valuable.

it represents only a particular interest, it is mischievous. He recognized no special superiority in a bicameral legislature; on the other hand, the mere existence of two chambers would give rise to endless complications. A detailed analysis of the arguments by which he reaches his conclusions is of value, for they are as acute a discussion of the subject as is extant in political literature. The problem, furthermore, is as pertinent now as it was in Bentham's day; for a century of experience has evolved less a solution than a challenge.<sup>3</sup>

Bentham generally had little respect for tradition. His attitude toward the bicameral practice was no exception. The existence of two chambers, he said, was due, not to rational analysis of their utility, but to prejudice, "authority-begotten and blind custom-begotten prejudice." In the case of England, their origin was due, not to considerations of general welfare, but to social stratification; in the case of other countries, their adoption was due to mere imitation of the English model. The government of England had been an "aristocracy-ridden monarchy," using its power on behalf of the aristocrats at the expense of the rest of the population. The existence of the bicameral legislature was due to the very fact that a small portion of the population was set aside for special favors. When the American colonies separated from England they followed the English example, for they recognized that the government of England, imperfect as it was, was nevertheless less predatory and oppressive than any other government. With the House of Lords they had no quarrel; their complaints were directed entirely against the monarchy; so they rejected the monarchy and retained a second chamber. The other countries followed suit because England and the United States were the best governed countries in the world. However, the merits of the English and American governments were not due to the bicameral method but in spite of it.

<sup>3</sup> For Bentham's discussion of this problem see *Works*, vol. II, pp. 307-308; vol. IV, pp. 419-450; vol. VIII, pp. 468-70; and vol. IX, pp. 114-117. The words or phrases of quoted material given in italics are as found in the original.

Following the question of origin comes that of composition. At the time of Bentham there were two outstanding types of second chambers, the British House of Lords and the American Senate. A third possibility, brought to the attention of Bentham by the French constitutionalists of 1830, was a house of peers composed of members appointed by the king for life only. All of these methods, Bentham held, were obnoxious and inimical to the general interest. To establish a house of peers, whether hereditary or for life, was, he thought, tantamount to giving the implacable enemies of the people an opportunity to increase their depredations. Such a chamber sets in a position of power one small class of the population against the rest of the people. It gives the privileged class the power of exercising a veto on legislation directed to the general interest, even if the powers of the second chamber, like that of the British House of Lords, included only a negative check. The peers will use their influence to increase the expenditure of government in order to obtain sinecures for themselves and their dependents. To secure themselves in their exactions from the subject many, they will make legal redress inaccessible to the poor. Such a second chamber will bring the aristocracy into close alliance with the monarchy, and both will then be united against the remainder of the population. The aristocrats and their dependents will be eager for appointments to sinecures, while the king as the grand corrupter will use the appointments as a means to extort subservience. The peers will aim by honors and splendors at setting themselves apart from the rest of the people, while to the king the bestowal of honors will be a common form of corruption. To us it may appear that Bentham over-emphasized the evil of patronage and favoritism which the existence of a house of peers would involve. But we must remember that in his day the evil of patronage and "placemen" was serious; and against this form of corruption Bentham directed his vehement opposition. Even in our time, under changed conditions, we find that when, as for example in Canada and New Zealand, the members of the second chamber are appointed by the ex-

ecutive, selections are generally made as party favors in the interest of party strategy. Nor is the vice of the bestowal of honors for party advantages purely historical.<sup>4</sup>

To the method of selection used in his day in choosing the members of the Senate of the United States, Bentham was just as vigorously opposed. The philosopher believed that the members of the legislative assembly should be in constant and immediate relation with their constituents. In order to make the members of the assembly feel their direct responsibility, he advocated annual elections. Hence to him the election of the members of the second chamber on the American plan would mean election by an insignificant portion of the total population, with the representatives only indirectly responsible to the bulk of the people. The senators, in fact, would be removed from immediate consciousness of responsibility, and there is, therefore, the danger that they would constitute a special interest opposed to the general interest. "Here, then," Bentham states, "is a sort of *aristocracy* organized: and in virtue of the double-stage principle, an aristocracy over which the members of the constitutive have no direct influence: it may, indeed, be said scarcely any influence at all."<sup>5</sup> It is evident that Bentham regards the Senate of the United States purely as a chamber established to revise the work of the first chamber. He does not mention that the Senate was also established to represent the federal principle, that is, to represent equally the component

<sup>4</sup> The recent books on the problem of second chambers are H. B. Lees-Smith, *Second Chambers in Theory and Practice* (London, 1923), and G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926). More important than these books is the Bryce report on reform of the House of Lords and the discussions of the same problem in the British Parliament. The Bryce *Letter to the Prime Minister on the Reform of the Second Chamber* is Cd. 9038, 1918. For the debate in the House of Lords on the Government resolutions of July, 1922, see Parliamentary Debates (Lords), fifth series, vol. 51, cols. 524-572, 642-682, 783-815, 963-996, and vol. 52, cols. 261-288. On the proposals of the Government in June, 1927, see Parliamentary Debates (Lords), fifth series, vol. 67, cols. 755-802, 862-950, 952-1006; vol. 68, cols. 664-677; and Parliamentary Debates (Commons), fifth series, vol. 208, cols. 1285-1406. On Canada and New Zealand see Lees-Smith, pp. 46-89 and 119-135 respectively.

<sup>5</sup> *Works*, vol. IX, p. 116.

units of the American federal government, to give security to the small states as against the large states. His failure to refer to this aspect may be explained by the fact that he was immediately concerned with the constitutions of England, France, and Spain, all unitary governments in which the second chamber could not represent the federal idea. It may further be suggested that in a federal government the necessity for the existence of two chambers is not so obvious as is commonly supposed, for the interests of the component units can be secured by means other than a second chamber, as, for example, by rigid constitutional guarantees. The existence, too, of political parties on a national scale has to a considerable extent lessened the rôle of the second chamber as the special protector of territorial units. This is actually the situation now in the United States, Canada, and Australia.<sup>6</sup> Bentham's criticism of the Senate of the United States as a representative assembly has indeed proved prophetic, for it was this very irresponsibility that finally, a century after he penned his strictures, forced a change in the method of selection.

A philosopher like Bentham who aimed at the immediate and direct responsibility of the legislators to the people would naturally oppose long tenure of office, whether for life or for six years, of the members of the second chamber. In fact, in the long tenure of office which was the rule in his day he saw another objection to the whole bicameral principle. The security of a long term, he held, will tend to make the members still more independent of the people, and hence, perhaps, neglectful of the general interest. It will mean that the inefficient and corrupt will stay in office long, for it will be impossible to remove them immediately. It will also encourage the use of corruption as a means of attaining office, for the temptations will be great. If there is value in a longer experience in office, then it should be the rule in the first chamber not in the second. The first chamber carries a heavier responsibility and a long term will be more valuable there. There is, however, no special

<sup>6</sup> On Canada and Australia, see Lees-Smith, pp. 46-119, and Roberts, pp. 137-167.

need for a long term in the first chamber, for the people will continue in office those who have shown themselves deserving. Again, if the term is for life there is no inducement to deepen experience, for without incentive no effort will be spent. The conclusion, therefore, is that the long term of the members of the second chamber is indefensible.

As we have seen, Bentham finds the members of the second chamber to be, according to different methods of selection, either hereditary peers, or peers holding office for life, or senators elected by local legislatures, obviously because these were the methods most prevalent in his day. He does not discuss the possibility of one chamber electing the other, as is the present practice in Norway, and as the Bryce commission suggested for the bulk of the membership of a reformed House of Lords.<sup>7</sup> He does mention his objection to a second chamber even when it is selected on a principle which will secure the representation of the general interest in it as well as in the first chamber. He does not, however, explore the various methods of such selection. He does not, for example, note the possibility of electing directly the members of the upper house in electoral districts different from those which return the members of the lower house, or by an electorate with special qualifications. He would, however, oppose a second chamber, no matter how constituted, no matter what powers it might possess, or in what position it might stand in relation to the other chamber. A second chamber he regarded as "needless, useless, worse than useless—that is to say, purely maleficent—such if I mistake not, will be seen to be every body that can be attached to a chamber of deputies, in such sort as to be capable of applying a *veto*, or so much as a cause of retardation—a *bar*, or a *drag*—to any of its proceedings: such, whatsoever be the *powers* attributed to it, whatsoever the *persons* by whom the situation composed of those powers is conferred."<sup>8</sup>

<sup>7</sup> On Norway, see Lees-Smith, pp. 179–204, and Roberts, pp. 211–221; on the Bryce suggestion, see the Bryce *Letter*, pp. 7–13. It is to be noted that the Norwegian Lagthing can hardly be called a second chamber.

<sup>8</sup> *Works*, vol. IV, pp. 420–421.



Bentham briefly argues against a second chamber exercising either judicial authority, as in the case of the House of Lords, or executive authority, as in the case of the Senate of the United States, contending that the sphere of legislation is distinct from both justice and administration. The function of legislation is to define general principles, while that of justice and administration is to apply these general principles in detail. His discussion, however, is almost entirely confined to an analysis of the difficulties arising out of the existence of two chambers both participating in legislation. His concentration on the legislative activity of the second chamber is indeed justified, for this is the crux of the question, and it is here that his discussion is very pertinent to our day.

The existence of two chambers, each sharing in legislation, will, according to Bentham, involve useless delay in the process of legislation. To pass a law will then necessarily cost double the amount of effort. The same documents, witnesses, and most of the arguments will have to be presented in both chambers. In fact, the delay which the existence of a second chamber will produce may be infinite, for in addition to the double amount of work there will also arise deadlocks due to mutual jealousies and conflict of authority. Thus, wholesome legislation will be retarded and the people deprived of its benefit, while those who are opposed to all reform will have additional opportunities to conceal their selfish interests behind parliamentary guile and craft. The king, indeed, will encourage hostility between the chambers, for then he will be able to enhance his power by siding with one chamber against the other. There will also be the loss of time of the officials who participate in debates, for they will have to appear in both houses; and if the members of the assembly receive remuneration, an unremunerative expense will be incurred. If the first chamber has not been wont to give legislation appropriate consideration, the best check on it is, not a second chamber, but the indignation of the voters. Bentham felt that the existence of a second chamber might enhance the power of royalty. This was a danger in his day. In our own time, under different conditions, the alliance

of the executive with the upper house against the lower house has not been unknown. This was especially the situation in the old imperial government of Germany.<sup>9</sup> Bentham fails to consider the effect of the existence of a strong second chamber on a parliamentary executive, for obviously the emerging parliamentary executive of his day was as yet outside the focus of systematic attention. Assuredly, the development of the parliamentary executive of the English type has not strengthened the argument for a second chamber.

In addition to delay, the existence of two chambers will also, according to Bentham, enlarge the opportunities for official and private corruption. The smaller the number of the members of the second chamber the more easily will it be controlled by sinister interests, for the entire process of legislation may then be perverted merely by exercising pressure on it. The second chamber will be in a position to exchange favors with the administration at the expense of the rest of the people. In fact, it may easily become the tool of particular and private interests. The danger that Bentham in the main emphasized is that of official jobbery. In our own day, however, the danger is less from official corruption than from private groups representing vast aggregations of property. During the century since Bentham, appointment by civil service competition, legislation prohibiting certain forms of jobbery, and the greater popular responsibility of the executive have eliminated to a considerable extent the petty intrigue of officials, but the impact of property on government is as ominous as ever. In our own day second chambers are criticized chiefly because they are subservient to the pressure of economic interests, as, for example, the Senate of the United States before the change in the method of its selection, and also some of the state senates.

To eliminate these sinister influences it is necessary, according to Bentham, to establish the rule of the majority, because only then will it be possible to maintain the greatest possible happiness. His belief in the rule of the majority was bound up with

<sup>9</sup> See on this point J. H. Morgan, *The Place of the Second Chamber in the Constitution* (National Liberal Club, London, 1910), pp. 9-18.

the faith—which to us seems unduly optimistic—in the enlightened self-interest of men and in their capacity for effective participation in common affairs. Unless there is a special reason to the contrary, the judgment of the majority in the legislature will coincide more closely with the interest of the community than that of the minority. The existence of two chambers, Bentham thought, may, however, frequently nullify the rule of the majority. Under the bicameral form, even a unanimous opinion of the first chamber will be defeated by a majority of only one in the second. "Say, for example," he argued, "number of members in the one house 300; in the other 40: 21 in the smaller house suffice to overrule the will of 19 in the same house, added to the 300 in the other house."<sup>10</sup> One assembly representing the majority is essential, but another assembly is mischievous, for it may stultify, or prevail over, the majority. Bentham did not consider the various methods by which the will of the majority can be made to prevail in cases where disagreement exists between the two houses, such as, for example, a joint session of the two houses or an appeal to the voters by means of the referendum. He probably would have regarded such expedients as futile, for under the unicameral form the rule of the majority is secured immediately, without further complications.

Bentham did not fully discuss the basis of the distribution of legislative powers between the two chambers. Shall the first chamber be supreme in finance? If so, what is the definite extent of the powers of the second chamber? These specific questions he made no attempt to elucidate. He was, however, conscious of the general problem. "If it be established," he stated, "that there are to be two chambers, out of this single circumstance spring a swarm of questions, pregnant, all of them, with doubts and difficulties. With respect to the *whole* field of legislation taken together, shall each have the initiative, or shall one of them alone, and which, have the initiative, and the other have the negative? Or, with relation to *certain parts* of that field, shall the initiative be possessed exclusively by one, and

<sup>10</sup> *Works*, vol. IX, p. 115.

which of them? Here, then, comes the necessity of lines of demarcation, and thence, not only certain complication, but probably continual contest and dissension."<sup>11</sup> There would always be a clash of authority in particular cases. He further held that it would be impossible to keep the two houses on a level of equality or any other preordained equilibrium. Whatever may be the legal provisions, one house will easily emerge as superior to the other. The inferior chamber, however, will not allow itself to be eclipsed; hence it will attempt to enhance its power by petty annoyance. If its power is limited to rejection, it will reject everything. If its power is limited to delay, it will delay everything. Deprived of the power to govern, it will attempt to make government difficult for others. It will check, interfere, and quibble. It will muster the whole artillery of fallacies to substantiate its petty claims. Under such conditions, the machinery of government will soon feel the evil effects of carrying a useless contrivance.

The consequence of this drag on legislation will be serious. The constant clash of authority between the two chambers, or the petty annoyance, will tend to make legislation complex, prolix, and obscure. To Bentham, who as a legal reformer aimed at making legislation lucid and unambiguous, this possibility was extremely dangerous. Such conditions, he believed, will enable the crafty representatives of particular interests to profit at the expense of the community. The persons interested in specific legislation will have difficulty in comprehending the good the community is trying to bring forth or the evils that it is trying to avoid. To this must be added the fact that in passing legislation each house may act on different principles from the other. The arguments that will be presented in one house may not be offered in the other. The proposer of the bill, who may have made a special study of the question, will present his arguments in one house; the other house may object, but will not hear the defense of the person who knows most about the subject. No single house, in fact, may have a full discussion

<sup>11</sup> *Works*, vol. IX, p. 116.

of the question. The effect of this situation on the results of legislation will be highly mischievous.

We should hardly expect that Bentham would omit a refutation of the common arguments offered on behalf of a second chamber. His reply is indeed comprehensive. He thus held that the argument that a second chamber may possess a special fitness is fallacious; for if the special fitness is for legislation, then the second chamber should be the first and no other is necessary. Nor can a bicameral legislature be justified on the ground that a second chamber will check the haste of the first by giving greater consideration to proposals. If greater consideration is desirable, it should take place in the first, not in the second, chamber; for the first chamber is the more important center of activity. The best veto on haste is the verdict of the people to whom the members are responsible. The people will base their judgment on the interest of the majority. Those who advocate a second chamber desire that it should check, not haste, but, in truth, the interest of the people, on behalf of private interest. Nor can a second chamber be supported on the ground that its members will be more wise and sagacious than those of the first, since, among other provisions, there is usually one that its members shall not be below a certain age limit. The proper place for wisdom and sagacity is in the first chamber. As to age, wisdom without moral purpose is dangerous, and moral purpose has no relation to age. Youth, in fact, is prone to high moral exaltation on behalf of the general interest. There is no danger, further, that the immature will be in a majority in the first chamber. One assembly is a sufficient training ground for future statesmen. Bentham could have added that for the purpose of technical revision of legislative proposals an expert parliamentary draftsman is preferable to an assembly of laymen. Nor is the present proposal to compose a second chamber of specialists representing functional units any less vulnerable. To make available the knowledge of experts it is not necessary to organize a special chamber; for a single chamber can, by consultation, also utilize such knowledge.

It has been made apparent that the crux of Bentham's opposition to a second chamber is the fear that such a body may stultify the will of the majority. On the "self-preference principle," the end of government—"the greatest happiness of the greatest number"—can be attained solely by the participation of all in the selection of the governors. Only then can there emerge a coincidence between the interest of the governor and that of the governed. The effective articulation of the will of the community predicates, for practical purposes, majority rule. To secure that the governors may remain the servants of the majority, Bentham advocated a wide extension of the suffrage, a secret ballot, equal electoral districts, annual parliaments, legislation prohibiting corruption, the accurate publication of the proceedings of parliament, and single chambers. Only under these conditions will the immediate and constant responsibility of the officials to the electorate be realized. Thus Bentham's defense of single chambers is an integral part of his belief in majority rule. It is the logical conclusion of his general political ideas.

At the present time the democratic creed advocated by Bentham, which in his day was considered a revolutionary proposal, is generally accepted. In fact, most of his suggestions have now been realized. With the wide acceptance of democracy, we find that justification of a second chamber has taken a different turn. In the age of Bentham a second chamber was defended on the basis that it offered a check on the incompetence and impetuosity of the populace; now, however, it is generally supported on the basis that it puts a check on the first chamber in the interest of the democracy.<sup>12</sup> It is agreed that the will of the people must ultimately prevail, but it is argued that single-chamber government may make possible the frequent misrepresentation of the interest of the people. It is therefore held that the most important function of a second chamber is its power to appeal from the representatives directly to the electorate. The length of the term of the first chamber,

<sup>12</sup> See Lees-Smith, pp. 32-46; the Bryce *Letter*, p. 4; and Sir John A. R. Marriott, *The Mechanism of the Modern State* (Oxford, 1927), vol. I, pp. 404-405.

the indecisiveness of a general election, the influence exerted by powerful minorities, and the control of party cliques may cause the first chamber to distort the popular will, especially on vital issues. A second chamber can ascertain the opinion of the voters, either by delay or by a direct appeal to them on specific critical issues. An upper house is thus considered as an instrument of democracy and not as a curb upon it.

This restatement of bicameralism does not, however, make it any more tenable. Whatever may be the defects of democracy, they will not be cured by a second chamber. It is fallacious to suggest that an upper house as such is a more perfect barometer of popular interest than a lower house. The incessant clamor of the press, the pressure of diverse groups, the results of by-elections, the fear of the next election, the danger of a mutiny within the ranks of the government party, are normally sufficient means of keeping a government within the bounds of popular opinion.<sup>13</sup> A shorter term for members of the first chamber and constitutional limitations on its powers may make it even still more sensitive to the generally dominant opinion. Nor does the current defense of bicameralism make any appreciable approach to solution of the difficulties, indicated by Bentham, connected with the powers and composition of a second chamber. It was Goldwin Smith who said: "It passes the wit of man to construct an effective second chamber."<sup>14</sup> Lloyd-George is a recent witness to the fact that all previous attempts to reform the House of Lords have failed.<sup>15</sup> Whatever may be the defense of a second chamber, once we attempt to organize one we face an insurmountable problem.

The justification of bicameralism in the interest of democracy is especially incongruous when we discern that its advocacy is a part of the defensive armor of the present property system. The real interest of its supporters is to offer a bulwark against

<sup>13</sup> It is interesting to note that the Tory government was forced to withdraw its proposals to reform the House of Lords, as announced in that chamber on June 20, 1927, largely because of opposition among its own supporters. See reference to the Parliamentary Debates given above.

<sup>14</sup> Quoted in J. A. R. Marriott, *Second Chambers* (London, 1910), p. 1.

<sup>15</sup> Parliamentary Debates (Commons), fifth series, vol. 208, col. 1324.

the aims of the first chamber, elected by the socialist masses of Europe, to bring about a fundamental reconstruction of property.<sup>16</sup> Their intention is to place property in a predominant position in the state, in the interest of a small portion of the population. Such a purpose is indefensible. To ascribe special sanction to the present economic arrangement is to identify the results of a particular historic ethos with eternal verity. Property, like religion, the family, and the state, must appeal to the heart, the conscience, and the intelligence of men. It must find its vindication in social purpose. It must not be withdrawn by cumbersome machinery from competition in a free market. The end of the state is human welfare and not the perpetuation of the prevailing property system. To insist that that system be placed on a special pedestal is not only a confession of weakness but a confusion of means with ends.

<sup>16</sup> See on this point H. W. V. Temperley, *Senates and Upper Chambers* (London, 1910), pp. 129-130, and G. Lowes Dickinson, *The Development of Parliament* (London, 1895), pp. 160-183.



# THE LAW OF MARTIAL RULE

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It is not in the least unusual, in newspaper accounts of a strike, riot, flood, or fire, to read that the governor has proclaimed martial law and summoned the militia to the threatened zone. However exaggerated such reports may be, they are evidence of a general belief that there exists some mysterious "martial law" which, when proclaimed, augments the powers of soldiers and paves the way for heroic measures. Nor are these notions wholly fanciful. For such a proclamation may indeed be followed by an extraordinary régime in which the military authority will issue regulations for the conduct of the civil population, troops may be called upon to take life, and perhaps the individuals accused of fomenting trouble will be held without authority of a court, or in some cases may even be tried by a military tribunal. Quite likely these severe measures will receive the approval of public opinion. Yet it is surprising that a people ordinarily rather legalistic should have evinced so little disposition to inquire what rules of law, if any, govern the exercise of these military powers. To answering that unasked query the present study is addressed.

## I. THE PROBLEM

At the very outset of a study of martial law one is bewildered by the haze of uncertainty which envelops the subject. The literature relating to it is replete with dicta and aphorisms often quoted glibly as universal truths, whereas they are properly limited to a particular significance of the term "martial law." "It is not a law, but something indulged, rather than allowed, as law."<sup>1</sup> It is "built upon no settled principles, but is entirely arbitrary in its decisions."<sup>2</sup> It is "nothing more nor less than the will of the general."<sup>3</sup> It is "totally exploded," and does not

<sup>1</sup> Hale, *History of the Common Law*, 34.

<sup>2</sup> Blackstone, *Commentaries* (Cooley's 2nd ed.), I, 412.

<sup>3</sup> Duke of Wellington, in Gurwood, *Wellington's Despatches*, IV, 24, quoted by Clode, *Military and Martial Law*, 162. Repeated in Hansard's *Parliamentary*

have "any place whatever within the realm of Great Britain."<sup>4</sup> On the other hand, Parliament once recognized an "undoubted prerogative" of the crown to proclaim "martial law."<sup>5</sup> During the Boer War a South African judge declared that "there can be no doubt that there are occasions when such an extraordinary power may be lawfully employed, and it is, I think, a misuse of terms to speak of martial law as if it were an entire illegality. . . ."<sup>6</sup> Attorney-General Cushing was of the opinion that Hale labored under "a total misapprehension of the matter," and that Lord Loughborough was "totally inaccurate." He added with assurance that the English commentators were quite at sea, while in this country "it is still worse."<sup>7</sup> These contradictions might be elaborated at length. Clearly there is need for more accurate definition.

Other problems emerge. What is the legal nature of a proclamation of so-called martial law? Does it endow the government with some extraordinary power which it did not formerly possess? Does a proclamation by any merit of its own justify the measures about to be taken? Or is it merely a notice of the purpose of the government? Another question as to the legal nature of a proclamation of martial law arises: Is its recital conclusive of the facts? When, for example, in the course of a labor dispute in the mines of West Virginia the governor declared by proclamation that a state of war existed in designated portions of the state, and that martial law should prevail, were the courts bound to accept this view?

It is often said that only necessity justifies measures of martial law. What degree of necessity will suffice? Dicey would require "immediate necessity,"<sup>8</sup> while Sir Frederick Pollock would be

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*Debates* (3rd ser.), Vol. 115, p. 880. This definition was adopted by the Supreme Court of the United States in *United States v. Diekelman* (1875), 92 U. S. 520, 526.

<sup>4</sup> Lord Loughborough, in *Grant v. Gould* (1792), 2 H. Blackstone 69, 98, 99.

<sup>5</sup> 43 George III, c. 117 (1803).

<sup>6</sup> J. Mason, in *Morcom v. Postmaster General* (1900), 21 (N. S.) Natal Law Reports 32.

<sup>7</sup> 8 Opinions Atty. Gen., 365 et seq. (1857).

<sup>8</sup> *Law of the Constitution* (8th ed.), Appendix, Note x.

satisfied with mere political necessity or expediency.<sup>9</sup> And to what extent does necessity justify—legally, or only morally? A régime of martial law often has as its sequel both civil and criminal actions at law. Does the military officer who acted under necessity appear before the court with clean hands? Or is he only morally justified for his summary acts—a fit subject for a legislative act of indemnity? In the United States, would an act of indemnity be constitutional?

What branch of government is the final judge of the necessity of acts, otherwise unlawful, which, it is alleged, were requisite in the emergency? The legislature, by granting or withholding indemnity? The executive, by a conclusive proclamation? Or the judiciary? If it were left to the judges, one court might, on habeas corpus proceedings, free a person arrested by the soldiers, while another court would decline to interfere. This, in fact, was the situation in Ireland in 1921.<sup>10</sup> If the courts are to make the final decision, may they do so during the period of martial law, or only afterwards? In other words, does the proclamation of martial law *ipso facto* suspend for the moment the jurisdiction of the ordinary courts? If so, consider the unhappy situation of the individual whom a military commission has tried and sentenced to death.

These and many other questions present themselves. The ones here propounded are not merely academic or speculative; all of them have arisen as necessary factors in the decision of actual cases. A régime of martial law is productive of controversies with which the judges are little accustomed to deal, and which they experience great difficulty in resolving. This is evident from the numerous dissents, as well as from the fact that where unanimity prevails the judges often reach their conclusions by quite different routes.

## II. THE NATURE OF MARTIAL RULE

Our problem may first be attacked by seeking to understand the terms used. Martial rule obtains in a domestic community

<sup>9</sup> *Law Quarterly Review* (1902), vol. 18, p. 162.

<sup>10</sup> See *Egan v. Gen. Macready* (1921), 1 Irish Reports 265.

when the military authority rises superior to the civil in the exercise of some or all of the functions of government. The expression "martial rule" is more correct than "martial law."<sup>11</sup> For if martial law is no law (following Hale's dictum), then the name is contrary to the fact. In employing this terminology, we escape the obscurity of meaning which attaches to "martial law." For much confusion has resulted from using that term, often without discrimination, in five different senses. First, as equivalent to "marshal law"—a legal system anciently exercised by the constable and marshal of England, especially over armies in the field.<sup>12</sup> Martial law in this sense is now obsolete.<sup>13</sup> Second, punishment "according to the justice of martial law" was called down by Tudors and Stuarts upon the heads of civilians generally, and at times and places quite apart from any military operations. This pretended right to suspend the established laws of criminal procedure was declared illegal by the Petition of Right.<sup>14</sup> Again, martial law has sometimes signified military law—a code for the government of the army. Fourth, the term is synonymous with military government—power exercised during hostile military occupation. And there remains a fifth connotation, i.e., the principles of constitutional law governing the use of military force in the conduct of government in time of public danger. This last is the object of our study.

In England, especially during the boisterous struggle for parliamentary reform, the courts had numerous occasions to pass upon the use of troops to preserve the peace. The pith of the decisions is this: If the occasion demands, it is the duty of every citizen, and especially of every magistrate, to do all he can to restore order and to prevent the commission of a felony; and he may be assured that whatever is honestly done will be

<sup>11</sup> "Let us call the thing by its right name; it is not martial law but martial rule." David Dudley Field, in his argument in *Ex parte Milligan* (1866). 4 Wallace 2, 35.

<sup>12</sup> Maitland, *Constitutional History*, 266; Coke, *Fourth Institute*, c. 17.

<sup>13</sup> Blackstone, *op. cit.*, III, 68.

<sup>14</sup> (1628), 3 Charles I, c. 1.

justified by the common law. For the purpose of establishing civil order, a soldier has the same rights as any citizen.<sup>15</sup> This exposition of the law is equally applicable to the United States. The legal justification for a resort to martial rule in time of war or insurrection is found in an application of these principles to an extreme case—an extremity where organized military units must take the place of individual citizens, and where the military commander rises superior to the local magistrate.

On the authority of a number of recent decisions, it may be said that the American courts recognize degrees of martial rule: absolute (or punitive) and qualified (or preventive). In the latter form, the military authority issues and enforces police regulations, arrests and detains without warrant, and generally takes such measures as then and there seem necessary for the prevention or suppression of breaches of the peace. But it will refrain from exercising judicial power; on the termination of qualified martial rule, prisoners will be liberated or surrendered to the civil authorities. Martial rule in its punitive phase comprehends all this and something more; it includes trial and punishment by military authority.

Martial rule differs from the suspension of the privilege of the writ of habeas corpus in three particulars. First, the suspension does not *ipso facto* transfer any power from the civil to the military officers. Further, it will be seen that in some instances in the United States martial rule, in a qualified degree, has in fact existed and been upheld by the courts, even though the privilege of the great writ was, in legal contemplation, not suspended. For the petition, in the opinion of the court, may show no facts calling for interference with the measures which the military authorities have taken.<sup>16</sup> The courts are not to be made "a city of refuge whereunto malefactors may flee for

<sup>15</sup> *Rex v. Kennett*, and *Rex v. Pinney* (1832), 5 Car. & Payne 282; *Burdett v. Abbott* (1812), 4 Taunt. 401; *Redford v. Birley* (1822), St. Tr. (N.S.) 1071; Chief Justice Tindal's charge to the grand jury (1832), 3 *ibid.* 2; *Regina v. Neale* (1839), 9 Car. & Payne 431.

<sup>16</sup> *In re Boyle* (1899), 6 Idaho 609; *In re Moyer* (1905), 35 Colo. 154 and 159; *Moyer v. Peabody* (1906), 148 Fed. 876, (1909), 212 U. S. 78; *Ex parte McDonald* (1914), 49 Mont. 454.

protection from punishment justly due," declared the supreme court of Idaho. Finally, martial rule is characterized by restrictions upon the right of assembly and by many other measures which could not be justified merely on the ground that the privilege of the writ of habeas corpus was suspended.

### III. INSTITUTING MARTIAL RULE

The term martial law is unknown to the federal Constitution. Nor does it appear in the statutes, save for three acts applicable to the Philippines, Hawaii, and Porto Rico, respectively.<sup>17</sup> Yet it is none the less true that a condition of martial rule may come into being pursuant to the provisions of the Constitution and statutes. The constitutional provisions most germane to this study are these: (1) Congress may provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion; (2) the privilege of the writ of habeas corpus shall not be suspended except when in cases of rebellion or invasion the public safety may require it; (3) the president is commander-in-chief of the armed forces, and is enjoined to take care that the laws be faithfully executed; (4) the United States guarantees to every state a republican form of government, and is charged with protecting each state against invasion and (on proper application) against domestic violence; and (5) there are the limitations imposed by the bill of rights.

The most important statutory provisions are comprised in Sections 5297 to 5300 of the *Revised Statutes*. Congress there designates the president as the authority competent to call forth the militia. He may employ the militia and the regular forces whenever, by reason of unlawful obstruction or rebellion, he judges that it is impracticable to enforce federal laws by the ordinary course of judicial proceedings; so, too, where a state fails to protect the people in the enjoyment of any rights or privileges secured to them by federal law. When the president judges that it has become necessary to employ military forces

<sup>17</sup> 29 Stat. at L. 553; 31 Stat. at L. 153; 39 Stat. at L. 955. These laws authorize the governor to place the islands, or any part thereof, under martial law.

to suppress insurrection, he shall forthwith, by proclamation, command the insurgents to disperse.

In the constitutions of only seven states is martial law mentioned by name, i.e., those of Vermont, New Hampshire, Massachusetts, Rhode Island, Maryland, South Carolina, and Tennessee. The meaning of these provisions is not entirely clear. But, judging from the context, as well as from the early date at which they were first framed (when martial law was considered as embracing military law), we may conclude that their object was to forbid that civilians should be treated as though they were soldiers and tried by court martial. Apparently these provisions have never been interpreted by the courts of the respective states.

Closely related to martial rule are the provisions of state constitutions as to the suspension of the writ of habeas corpus. In thirty states the law is substantially as in the federal Constitution. In ten the prohibition is unqualified (no exception being made for rebellion or invasion). In eight others it is made clear that only the legislature may suspend the privilege of the writ.

In the constitution of every state save New York it is provided that the military shall be in strict subordination to the civil power. This provision has proved no bar to qualified martial rule, since the courts have consistently held that so long as the troops are used under the authority of the chief executive, the military is still in its due subordination to the civil power, even though soldiers have supplanted all magistrates other than the governor.<sup>18</sup>

In practically every state it is provided, either by the constitution or by statute, that the governor (and sometimes subordinate civil officers as well) may employ the militia to suppress insurrection and for other purposes enumerated. Often the law authorizes the governor to declare by proclamation that a designated portion of the state is in insurrection. Missouri, Nevada, and Utah concede to the governor an authority to

<sup>18</sup> In *re Moyer*, *supra*; *Franks v. Smith* (1911), 142 Ky. 232; *Ex parte McDonald*, *supra*.

declare "martial law." West Virginia goes to lengths unprecedented, it is believed, in American legislation in providing that "in the event of invasion, insurrection, rebellion or riot, the commander-in-chief may in his discretion declare a state of war in the towns, cities, districts or counties where such disturbances exist."<sup>19</sup> When the executive is authorized to declare the existence of a state of insurrection, the proclamation to that effect is conclusive.<sup>20</sup> Frequently, however, the legal effect and consequences of such a declaration are not specified, thus leaving it to the judiciary to decide in particular cases. What measures are appropriate and justified in suppressing a rebellion will be considered below.

We turn from martial rule as a means of suppressing insurrection to martial rule as an accompaniment of war. It is not difficult, in a general way, to distinguish between insurrection and war. The former consists in the open and active opposition of a number of persons to the execution of the laws, if of a character so formidable as to defy for the time being the authority of the government, even though not accompanied by bloodshed nor of sufficient magnitude to render success probable.<sup>21</sup> War is the condition where governments contend by force. Insurgents may drive out the agents of the government and set up a government of their own in its stead, and may place an army in the field and wage war in a material sense.<sup>22</sup> In these premises it may be said that the insurgents may appropriately be recognized as belligerents. But whether, as a matter of the domestic law of the parent state, war in a legal sense exists will depend upon whether the parent state recognizes

<sup>19</sup> W. Va. Code, 1923, c. 18, sec. 92. An examination of the act raises the query whether the legislature intended anything more than to enable the governor to subject the militia to the severe war-time penalties envisaged by the Articles of War, by declaring that, so far as the militia is concerned, the conditions of war shall prevail.

<sup>20</sup> *Martin v. Mott* (1827), 12 Wheat. 19; *In re Boyle*, *In re Moyer*, *Moyer v. Peabody*, *Franks v. Smith*, *Ex parte McDonald*, *supra*; *Sweeney v. Commonwealth* (1904), 118 Ky. 912; *Barcelon v. Baker* (1905), 5 Philippine 87.

<sup>21</sup> *In re Charge to Grand Jury* (1894), 62 Fed. 828.

<sup>22</sup> *The Three Friends* (1897), 166 U. S. 1, 63.



the insurgents as belligerents.<sup>23</sup> It may ignore the hostile government they have set up and elect to treat them as traitors.<sup>24</sup>

It is important to inquire what branch of government is competent to determine when an insurrection has ripened into war. This is clearly within the powers of Congress, but in the Prize Cases<sup>25</sup> the Supreme Court went so far as to hold that the president also is competent to recognize the existence of a state of war and thereupon to exercise war powers, and that his decision is not reviewable by the courts. The duty of the governor to suppress insurrection against the government of his state seems essentially the same as that of the president with respect to the federal government. It might seem to follow, by parity of reasoning, that the law as expounded in the Prize Cases is equally applicable to the case of a governor. This would lead to the surprising conclusion that it would lie within the discretion of a governor to declare that an insurrection had developed into a war, and thereupon to treat the insurgents as though they were beyond the pale of constitutional protection. Lest so surprising a suggestion appear to envisage only an imaginary danger, it may be recalled that since 1912 West Virginia has had four "wars"—by proclamation of the governor.<sup>26</sup> Subsequent exercise of the pardoning power prevented the Supreme Court of the United States from passing upon the measures by which these "wars" were waged.<sup>27</sup> But an examination of the federal Constitution<sup>28</sup> leads to the conclusion that the conduct of war, with its legal effects, is exclusively a federal function. This was the holding of the highest court in Montana when the governor of that state sought to exercise war powers as a means of suppressing an insurrection.<sup>29</sup>

<sup>23</sup> Hyde, *International Law*, II, 193.

<sup>24</sup> Wilson, *Handbook of International Law*, 43 et seq.

<sup>25</sup> (1862), 2 Black 635.

<sup>26</sup> *State v. Brown* (1912), 71 W. Va. 519; *Ex parte Jones* (1913), *ibid.* 567; *Ex parte Lavinder* (1921), 88 W. Va. 713.

<sup>27</sup> Mathews, *Martial Law in West Virginia*, Sen. Docs. v. 22, 63rd Cong. 1st Sess., Doc. No. 230, p. 20.

<sup>28</sup> Art. I, sec. 10, cl. 3.

<sup>29</sup> *In re Gillis* (1914), 49 Mont. 454.

A declaration of war does not necessarily lead to a condition of martial rule. As was the case during American participation in the World War, the theater of operations may be so distant and the danger so remote as not to justify any form of martial rule. When hostilities are close at hand, as was the case along the border in 1861 to 1865, the civil authorities may be unable effectively to preserve public order, and martial rule may obtain. As the Supreme Court of Montana said,<sup>30</sup> "when in domestic territory the laws of the land have become suspended, not by executive proclamation, but by the existence of war, the executive may supply the deficiency by such form of martial law as the situation requires."

Much has been written regarding the legality of a proclamation of martial law. But this question is inconsequential. In fact, the proclamation of martial law in addition to declaring the existence of insurrection is mere surplusage. The crucial question is this: Were the measures employed during martial rule justified by necessity? The military authority adds nothing to its stature by the mere fact that a declaration of martial law has been posted. Nothing becomes lawful because of such declaration that would not have been lawful without it.<sup>31</sup>

To summarize: The executive proclamation of a condition of insurrection is authorized by statute and is conclusive upon the courts. But the same is in no wise true, in general, of a proclamation of martial law. A declaration of martial law posted throughout the district is a step *in terrorem*; save where especially provided by law, it has no definite legal character. Martial rule is justified where it is necessary. It may be ushered in by a formal declaration, or it may originate in the mere fact that the civil administration crumbles away. But martial rule (unlike the French state of siege) is not a definite legal régime whose powers are determined in advance. Necessity is the only

<sup>30</sup> In re Gillis, *supra*.

<sup>31</sup> This was the opinion of Judge Garrison when secretary of war. Sen. Docs., vol. 19, 67th Cong., 2nd Sess., Doc. No. 263, p. 315. To the same effect was the opinion of the Earl of Halsbury in *Tilonko v. Attorney-General of Natal* (1907), A.C. 93.

test. Legally, no wonders can be wrought by the talisman "martial law."

#### IV. MEASURES OF MARTIAL RULE: PUNISHMENT

The most far-reaching measure which may characterize martial rule is the trial and punishment of civilians by military commission. When may this be done? The opinion long received in English jurisprudence was that expressed by Sir James Mackintosh in the parliamentary debate on martial rule in Demerara a century ago<sup>32</sup>: "The only principle on which the law of England tolerates what is called martial [law] is necessity; its introduction can be justified only by necessity; its continuance requires precisely the same justification of necessity; and if it survives the necessity on which alone it rests for a single minute, it becomes instantly a mere exercise of lawless violence. When foreign invasion or civil war renders it impossible for courts of law to sit, or to enforce the execution of their judgments, it becomes necessary to find some rude substitute for them, and to employ, for that purpose, the military, which is the only remaining force in the community. While the laws are silenced by the noise of arms, the rulers of the armed force must punish, as equitably as they can, those crimes which threaten their own safety and that of society: but no longer; every moment beyond is usurpation; as soon as the law can act, every other mode of punishing supposed crimes is itself an enormous crime."

The exigencies of the Boer War put this view to the test of modern warfare and found it too restrictive. The British army advanced and retired through a country whose population comprised many British subjects of Boer origin, who aided the enemy and who, when apprehended, invoked the rights of British subjects. The opinions of the justices in the numerous South African cases constitute a learned and valuable literature

<sup>32</sup> Hansard's *Parliamentary Debates*, vol. 11 (N.S.), 1046-47. See also the leading case of Wolfe Tone, an Irish traitor. Tone was tried by a military court, but died while the legality of his trial was under consideration in the court of King's Bench. (1798), 27 State Trials, 613.

on the law of martial rule.<sup>33</sup> The result of this litigation was to establish the following conclusions. The mere proclamation of martial law does not *ipso facto* suspend the ordinary courts. The judges are free to go behind the proclamation to see for themselves whether the necessity for martial rule is made out. But the proclamation is strong evidence, and the opinion of the general, especially in the matter of active operations, is entitled to great consideration. The fact that some courts are functioning does not prove the illegality of martial rule. Indeed it happened that courts were enabled, by reason of military support, to try cases even within a besieged city. When a state of war exists it is quite possible for civil and military tribunals to sit side by side, the latter hearing such criminal cases as the general thinks may safely be entrusted to them. On one point the judges disagreed, i.e., whether, once a state of war was made out to their satisfaction, they were estopped, *durante bello*, from interfering with particular measures which the soldiers were about to take. This was finally answered by the Judicial Committee of the Privy Council in the Marais case: "Where actual war is raging, acts done by the military authorities are not justiciable by the ordinary tribunals."<sup>34</sup>

For the duration of the World War, Parliament virtually abdicated in favor of the king in council; the judiciary made a similar sacrifice. In *The King v. Halliday*<sup>35</sup> it was held that under the authority which the Defence of the Realm Act ("Dora") gave to the crown an executive officer might order a subject to

<sup>33</sup> *In re Fourie* (1900), 17 Supreme Court Reports, Cape of Good Hope, 173; *Queen v. Gildenhuys* (1900), *ibid.*, 266; *Queen v. Bekker* (1900), *ibid.* 340; *Umbilini v. General Officer Commanding* (1900), 21 (N.S.) Natal Law Reports 86 and 169; *Jacobs v. General Officer Commanding* (1900), *ibid.* 86 and 157; *Ex parte Marais* (1902), A.C. 109. See also *Law Quar. Review* (1902), vol. 18, p. 143.

<sup>34</sup> The new doctrine laid down in *Ex parte Marais* was confirmed by the Judicial Committee in a case arising from a native revolt in Natal in 1906. *Mgomini v. Governor* (1906), 22 T. L. R. 413. Apparently the military trials were not necessary, but were considered desirable as a means of discouraging native revolts.

<sup>35</sup> (1917), A. C. 260. To a similar effect is *The King v. Governor of Wormwood Scrubbs Prison* (1920), 2 K. B. 305.

be interned without trial, and that unless bad faith could be proved the courts should not interfere.

In Ireland, from April 29, 1916, to December 20, 1920, the military authorities governed and punished pursuant to broad acts of Parliament. Later, even this statutory régime was found inadequate to meet the exigencies of the revolt, and martial rule on a larger scale was instituted by proclamation of the lord lieutenant. Thereafter what was done had to be justified as in any other exercise of martial rule. In *The King v. Allen*<sup>36</sup> it was held that, when war actually existed, the court would not interfere with any punishment the general saw fit to mete out. The fact that courts of law were sitting did not invalidate trial by military court.<sup>37</sup> On a similar set of facts, the case of *Egan v. General Macready*<sup>37a</sup> was heard before the chancery division of the High Court of Ireland. Here the master of the rolls took issue with the decision in *Allen's* case. He thought that the doctrine of *Ex parte Marais* did not apply where the sentence of the military court imposed an irreparable injury. Eventually the military authority bowed to the court to the extent of liberating Egan. Later the master of the rolls receded from this contention.<sup>38</sup> In *The King (Garde) v. General Strickland*<sup>39</sup> the government contended broadly that its mere *ipse dixit* as to the existence of war was conclusive upon the judges—a contention which was repelled with emphasis. Eventually, indeed, the Court of Appeal held that the evidence submitted failed to show the continued existence of a state of war, and ordered the release of the prisoner.<sup>40</sup>

With this background for comparison, we turn to American cases on punitive martial rule. The leading instance is *Ex parte*

<sup>36</sup> (1921), 2 Ir. Reports 241.

<sup>37</sup> This went farther than *Marais' case*, since *Allen* had been sentenced to death.

<sup>37a</sup> (1921), 1 Ir. Reports 265.

<sup>38</sup> *The King (Childers) v. Adjutant General* (1923), 1 Ir. Reports 5.

<sup>39</sup> (1921), 2 Ir. Reports 317.

<sup>40</sup> *The King (O'Brien) v. Military Governor* (1924), 1 Ir. Reports 32. Thereupon the Public Safety Act was passed by the Free State Parliament, and military prisoners were held as before. *The King (O'Connell) v. Military Governor* (1924), 2 Ir. Reports 104.

Milligan,<sup>41</sup> too well known to need extended comment. The gist of the opinion which Justice Davis filed for the majority of the court was this: "Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration. . . . Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war." Obviously, the tone of this language is much more restrictive of military authority than that lately employed by the courts of the British Empire. It is submitted that the law should not be based upon a fiction. The true question is not whether the courts are able (perhaps with military support) to keep open, but whether they are functioning effectively. The conclusion to which this study would point cannot be better expressed than by quoting Mr. Hughes<sup>42</sup>: "Certainly, the test should not be a mere physical one, nor should substance be sacrificed to form. The majority [in the Milligan case] recognized 'a necessity to furnish a substitute for the civil authority,' when overthrown, in order 'to preserve the safety of the army and society.' If this necessity actually exists it cannot be doubted that the power of the nation is adequate to meet it, but the rights of the citizen may not be impaired by an arbitrary legislative declaration. Outside the actual theater of war, and if, in a true sense, the administration of justice remains unobstructed, the right of the citizen to normal judicial procedure is secure."

It is a far cry from the spirit of the Milligan case to the views entertained by the supreme court of West Virginia<sup>43</sup> in 1912 to 1914, when an exercise of martial rule was challenged before that tribunal.<sup>44</sup> Embattled strikers fought with imported strike-breakers to determine whether or not the coal operators could

<sup>41</sup> (1866), 4 Wall. 2.

<sup>42</sup> *War Powers under the Constitution*, 12.

<sup>43</sup> J. Robinson, vehemently dissenting.

<sup>44</sup> *State v. Brown and Ex parte Jones*, *supra*; *Hatfield v. Graham* (1914), 73 W. Va. 759.

be compelled to recognize the union. The governor met the situation by declaring the existence of a state of war. The opinions of the court constitute a surprising perversion of accepted principles of American jurisprudence. Suffice it to say that a majority of the court cleared at one jump all of the obstacles which federal and state constitutions had placed in their way and upheld the governor in the exercise of war powers. These were held to include trial and punishment of civilians by military commission, without regard to whether such measures were in fact necessary. The destruction of a printing press was likewise upheld. In short, the situation was this: once the governor proclaimed that war existed, there was no legal restraint upon his conduct, unless bad faith could be proved to the courts, or unless he should be impeached and convicted. The people of the proclaimed zone were placed beyond the pale and treated as public enemies.

Eventually the court was obliged to call a halt. In 1921 the governor sought to cope with a labor dispute by declaring the existence of a state of war and ordering the acting adjutant-general to suppress it with the aid of civil authorities and the posse comitatus. In view of its decisions in 1912, the supreme court could scarcely deny that when the governor declared the existence of war, it was war. Yet the justices could not help knowing that it takes more than one officer to wage a war. So they drew a line between "actual" and "merely theoretical" warfare, and discharged the prisoners who had been arrested for violations of martial law regulations.<sup>45</sup>

In September, 1914, the militia of Montana was occupying Silver Bow county, then in insurrection. Dan Gillis petitioned for a writ of habeas corpus, alleging that he was unlawfully detained by the military authorities.<sup>46</sup> Major Roote, being appointed a summary court, had tried Gillis, without jury, on a charge of assaulting and resisting an officer. The petitioner had been found guilty and sentenced to the payment of a fine of \$500. The court stated the question involved in Gillis' case

<sup>45</sup> *Ex parte Lavinder* (1921), 88 W. Va. 713.

<sup>46</sup> *In re Gillis*, *supra*.

thus: Is it possible for the executive, by proclamation or otherwise, constitutionally to establish in this state any form of martial law which will authorize the conviction of a civilian for crime without trial by jury? The court was emphatically of the opinion that this was not possible.

The insurrection in Silver Bow county was not a war, such as confronted the Supreme Court of the United States in the Prize Cases. Hence any talk of war powers was beside the point. As to the courts being open in the proclaimed zone, the court said: "So far as the right to trial by jury in case of insurrection is concerned, it does not seem to us vitally important whether the courts are or are not open when the military appear. It may be granted that courts which are prevented by insurrection from executing their process are not open in contemplation of the law. To open them is a part of the duty devolving upon the military. It was conceded at bar that some of the courts of Silver Bow county are in operation, though it was insisted to be only such as are permitted by the military authorities; the others being closed by their order. No such closure can be recognized."

At this point as at others, therefore, the Montana court turned its back upon the path taken by the highest court of West Virginia. If the test of the courts means anything, it is obviously illogical to argue that the military may try and punish when the courts are closed, and then add that the courts are closed by the proclamation of martial law. The court continued: "We have somewhere met with the argument that, because the insurrection may be prolonged, the summary trial of offenders is preferable to their indefinite detention. This is not even an argument from necessity, but from convenience only. We know of but one court of last resort which gives it any countenance, and that court we do not choose to follow." This was a sharp dissent from the exposition of the law in West Virginia. The Montana court concluded: "The trial and commitment of petitioner Gillis were void, and his detention thereunder cannot be upheld. But he is not entitled to his release. The record discloses an abortive attempt to try and punish him for an alleged



violation of the laws of the state. He must, therefore, be remanded to the custody of the respondents, to be dealt with according to law."

In 1920, on the occasion of a longshoremen's strike, Governor Hobby of Texas declared that martial law should prevail in Galveston. The civil officials of the city were suspended, and a militia general was directed to assume their functions. Before a captain, detailed as provost judge, a citizen was arraigned on a charge of exceeding the speed limit fixed by city ordinance, convicted, and fined. In default of payment, he was committed to jail. On habeas corpus proceedings,<sup>47</sup> the federal district court upheld the military authority; the governor's action was not reviewable; the governor had the power to declare "martial law" and to "do anything necessary to make his proclamation effective." The court relied on *The Grapeshot*,<sup>48</sup> a Civil War case upholding the jurisdiction of a provisional court created by President Lincoln at New Orleans as an exercise of the war power—a precedent quite beside the point in the premises.

Though the precedents are far from consistent, the conclusions which, it is believed, should follow from an examination of the cases on punitive martial rule are these. A state of war warranting punitive measures may conceivably exist even where the courts of law are sitting. The fact that in a given locality all courts of law are able to exercise their jurisdiction freely should create a presumption that the laws of peace govern that place. Punitive martial rule is legal only as a war measure. This restricts its exercise to the forces of the national government, and to the cases where belligerency (as contrasted with insurrection) has been recognized. Since, in general, a state is forbidden to wage war, it cannot legally exercise punitive martial rule.

#### V. MEASURES OF MARTIAL RULE: INTERFERENCE WITH LIBERTY AND PROPERTY

The decision of the executive is conclusive as to the existence of an insurrection. Is it likewise conclusive as to the measures

<sup>47</sup> *United States v. Wolters* (1920), 268 Fed. 69.

<sup>48</sup> (1869), 9 Wallace 129.

necessary for its suppression? One of the measures to which the executive resorts most easily is the arrest and detention of persons who are believed to be fomenting the insurrection—the birds of ill-omen, such as “Mother” Jones, who hover about in times of unrest. It may be that the military authorities have had to act on suspicion, and that legal proof is at the moment out of the question. It may also be that the authorities, rightfully or not, have lost all confidence in juries drawn from the vicinity. The person detained will sue out a writ of habeas corpus, and the legality of the detention will come before the courts. Or the executive may take the bolder course and declare that the privilege of the writ of habeas corpus is suspended in the case of military detentions. Or the military authorities may contend that martial law has been proclaimed, and that the proclamation *ipso facto* suspends the privilege of the great writ of liberty.

It is now generally conceded that the legislature, in its discretion, must decide when the public safety requires the suspension of the writ of habeas corpus. This was the opinion, *obiter*, of Chief Justice Marshall.<sup>49</sup> Chief Justice Taney held firmly to the same view in *Ex parte Merryman*,<sup>50</sup> though his exposition of the law proved unavailing before the determination of President Lincoln to uphold military officers in arresting persons of doubtful loyalty. There are other points of view from which the authority to hold persons without civil trial may not seem so objectionable in law. First, as the supreme court of Wisconsin held in a Civil War case,<sup>51</sup> there is a distinction between the legal suspension of the privilege of the writ of habeas corpus and that *ipso facto* suspension which takes place where war actually exists. When justified by the exigencies of war, a military commander may refuse obedience to the writ. This sort of suspension, continued the court, comes with war

<sup>49</sup> *Ex parte Bollman* (1807), 4 Cranch 75, 101.

<sup>50</sup> (1861), Fed. Case No. 9487. Followed in *Ex parte Benedict* (1862), Fed. Case No. 1292, and in *Ex parte Moore* (1870), 64 N.C. 802.

<sup>51</sup> *In re Kemp* (1863), 16 Wis. 359. This case was similar to *Ex parte Merryman*.

and exists without proclamation, and it applies only to cases where the officer cannot consistently with his military duty obey the mandate of the civil authority.

Second, it has been held in a number of fairly recent cases that the governor's power to declare the existence of an insurrection and proceed to its suppression carries with it by proper implication the authority to hold persons who, in the governor's honest opinion, are tending to thwart his measures of suppression. Thus, though the privilege of the writ of habeas corpus was not suspended, the petition of the persons arrested would be found to show no facts entitling the petitioners to the writ. In this sense are *In re Boyle*, *In re Moyer*, and *Ex parte McDonald*.<sup>52</sup> This view was upheld in the *Moyer* case by a federal circuit court<sup>53</sup> and by the Supreme Court of the United States.<sup>54</sup> *Moyer* had brought a suit for damages against the governor of Colorado, who had held him in arrest. In expressing the opinion of the Supreme Court, Justice Holmes said in part: "So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he had not reasonable ground for his belief. . . . No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact that he had sole command at the time and acted to the best of his knowledge. This is the position of the captain of a ship. But even in that case great weight is given to his determination and the matter is to be judged on the facts as they appeared then, and not merely in the light of the event. . . . When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process."<sup>55</sup> It thus appears that

<sup>52</sup> All *supra*.

<sup>53</sup> (1906), 148 Fed. 876.

<sup>54</sup> (1909), 212 U. S. 78.

<sup>55</sup> This last cryptic sentence, remarks Professor Ballantine, fails to indicate whether public danger warrants the supersession, or only the postponement, of judicial inquiry. *Columbia Law Review*, vol. 12, p. 529.

though the legal consequences of declaring the existence of an insurrection are not generally defined by statute, the courts construe that detention, for a period not excessive in duration, and in the absence of bad faith, is a proper measure of suppression. It will be noted that this is quite independent of any consideration of whether or not the governor has posted a proclamation of martial law.<sup>56</sup>

One of the ordinary incidents of preventive martial rule is the promulgation by military authority of a code of police regulations for the government of the civil population. So long as these are deemed reasonable, the courts will sanction their enforcement.<sup>57</sup> In fact, few cases arise on this point. If the courts will uphold the detention of prisoners, *a fortiori* they would uphold the legality of milder restrictions.

Where war exists, the necessity for interfering with personal liberty will be greater. Thus the supreme court of Natal refused to enjoin the military authorities from censoring mail during the Boer War.<sup>58</sup> Where military officers have adequate reason to believe that a person is planning to transport property to the enemy, they are justified in taking steps to thwart him, even to the seizure of his person.<sup>59</sup> Here as elsewhere, necessity, not a proclamation of "martial law," must be the defense of the soldier when he is called to account.

The same considerations that apply to interference with personal liberty govern also the case of interference with private property. It is an indubitable principle of the common law that overruling considerations of the public safety and welfare will justify the commission of a tort.<sup>60</sup> A state of war gives this

<sup>56</sup> On this point the supplementary opinion of the chief justice of Colorado in the Moyer case is specific. (1905), 35 Colo. 159.

<sup>57</sup> *Commonwealth v. Shortall* (1903), 206 Pa. St. 165; *In re Smith* (1913), 23 Ohio Decisions 667; *Ela v. Smith* (1855), 71 Mass. 121, 137. *Franks v. Smith* (1911), 142 Ky. 232, is rather strict in its view of the extent of military power.

<sup>58</sup> *Morcom v. Postmaster-General*, *supra*.

<sup>59</sup> *Clow v. Wright* (1816), *Brayton* (Vt.) 118; *McKrell v. Metcalfe* (1866), 63 Ky. (2 Duvall) 533. But see *Smith v. Shaw* (1815), 12 Johnson (N. Y.) 257.

<sup>60</sup> *Malverer v. Spinke*, 1 Dyer 36b; *J. Buller, in Gov., etc., v. Meredith* (1792), 4 Durnford and East 794, 797; *Meeker v. Van Rensselaer* (1836), 15 Wendell (N. Y.) 396; *Russell v. Mayor, etc., of New York* (1845), 2 Denio (N. Y.) 461.

principle its greatest application. In the far-reaching decision of *J. Avory*, affirmed by the King's Bench and reaffirmed by the Court of Appeal, in the case *In re A Petition of Right*<sup>61</sup> it was held that in time of war the British crown, aside from any authority granted by statute, has power to take possession of and occupy without compensation any lands or premises for the defense of the realm. But in the later case of *DeKeyser's Royal Hotel Ltd. v. The King*<sup>62</sup> this pretentious assertion was considerably undermined. It was there said that the crown could not occupy any private property without compensation, for merely *administrative* purposes in connection with the defense of the realm. English constitutional history failed to show any basis for such a contention.

Our American cases on this subject arose, for the most part, out of the Civil War. Here it must be said that there is less than unanimity as to the extent of the power which the military may exercise over private property. Certain general points are admitted. Military necessity will justify a seizure of the citizen's property.<sup>63</sup> Private property may also be seized to prevent its falling into the hands of the enemy.<sup>64</sup> But neither a spurious pretense of military necessity nor any other excuse will be allowed to cover an act of wanton spoliation.<sup>65</sup> Though the constitutional protection thrown about property may mean something quite different in war from in peace, the existence of martial rule does not of itself abrogate the Constitution.

Necessity is relative. Whence the problem arises, What degree of necessity will justify interference with vested rights and

<sup>61</sup> (1915), 3 K. B. 649.

<sup>62</sup> (1919), 2 Chancery 197, affirmed by the House of Lords (1920), A. C. 508.

<sup>63</sup> *Smith v. Brazelton* (1870), 48 Tenn. (1 Heiskell) 44; *Koonce v. Davis* (1875), 72 N. C. 218.

<sup>64</sup> *Bronson v. Woolsey* (1819), 17 Johnson (N. Y.) 46; *McKrell v. Metcalf*, *supra*; *Respublica v. Sparhawk* (1788), 1 Dallas 383.

<sup>65</sup> *Despan v. Olney* (1852), Fed. Case No. 3822; *Mitchell v. Harmony* (1851), 13 Howard 115; *Farmer v. Lewis* (1866), 64 Ky. (1 Bush) 66; *Short v. Wilson* (1866), *ibid.* 350; *Besk v. Ingram* (1866), *ibid.* 355; *Terrill v. Rankin* (1867), 65 Ky. (2 Bush) 453; *Yost v. Stout* (1867), 44 Tenn. (4 Coldwell) 205; *Wilson v. Franklin and Burleson* (1870), 64 N. C. 141.

personal liberty under plea of public danger?<sup>66</sup> We have the authority of the Supreme Court of the United States, speaking through Chief Justice Taney, for saying that a military commander has no discretionary power over the property of the citizen; "urgent necessity would alone give him the right." And this is a question for a jury to decide.<sup>67</sup> This statement of the law is doubtless not less true today. Even the order of the president would not warrant an infringement of constitutional rights.<sup>68</sup>

Yet it cannot be doubted that a decision by Congress, acting in its discretion in a matter committed to its power, that an emergency demands the restriction of the normal enjoyment of liberty and property would be entitled to much greater weight than the decision of an individual officer, or even of the president. Take the case of *Wilson v. New*,<sup>69</sup> where necessity was invoked to justify an unprecedented interference with liberty and property. Chief Justice White, speaking for the majority of the court, said that "although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed." It is evident from the principal and dissenting opinions that the justices realized that they were probing very close to the roots of the *Milligan* decision. If Congress could make such an enactment as was there involved in the name of interstate commerce, what might not be justified in the name of national defense? That lives may be drafted where Congress deems necessary for the prosecution of a war, we learn from the *Selective Draft Cases*.<sup>70</sup> And the decision in *Hamilton v. Ken-*

<sup>66</sup> This question was discussed exhaustively three centuries ago in *The Case of Ship Money* (1637), 3 Howell's St. Tr. 825.

<sup>67</sup> *Mitchell v. Harmony*, *supra*.

<sup>68</sup> *Little v. Barreme* (1804), 2 Cranch 170; *Jones v. Seward* (1863), 40 Barbour (N. Y.) 563; *Griffin v. Wilcox* (1863), 21 Ind. 370; *Eifort v. Bevins* (1866), 64 Ky. (1 Bush) 460; *Jones v. Commonwealth*, *ibid.* 34; *Commonwealth v. Palmer* (1866), 65 Ky. (2 Bush) 570; *Koonce v. Davis*, *supra*. "To justify, necessity must be urgent for the public service, and such as will not admit of delay. . . ." *Farmer v. Lewis*, *supra*, and *Bryan v. Walker* (1870), 64 N. C. 141.

<sup>69</sup> (1917), 243 U. S. 332.

<sup>70</sup> (1918), 245 U. S. 366.

tucky Distilleries and Warehouse Company<sup>71</sup> leads us to believe that property is not more sacred than lives where Congress has construed a necessity for national defense. In short, only urgent necessity would warrant an individual officer in interfering with the rights of person and property. But where Congress, invoking the war powers committed to its discretion, construes that there exists a necessity for such interference, the Supreme Court will be prone to accept its decision, the guarantees of the bill of rights to the contrary notwithstanding. In taking measures deemed necessary for the national defense, Congress is scarcely less free than the British Parliament.

The termination of martial rule is likely to raise the question of how far the legislature may grant indemnity from civil and criminal actions. As to criminal prosecutions, it seems evident that the state may forego the vindication due to its offended laws and provide a complete indemnity. Just as it may grant an amnesty to rebels, it may pass an act of oblivion to wipe out the criminality of acts done in suppressing rebellion. Whatever the legislature might have authorized in prospect it may justify in retrospect.<sup>72</sup> However, a civil right to recover damages is a property, not to be divested by statute any more than any other property. It was so held by the highest courts of Illinois<sup>73</sup> and Indiana<sup>74</sup> in suits to recover damages for false imprisonment during the Civil War. Still, the Supreme Court upheld Congress in passing a statute of limitations<sup>75</sup> to restrict not unreasonably the period of time within which suits for damages might be brought against military officers for acts in suppressing rebellion.<sup>76</sup> The opinion in *Mitchell v. Clark* seemed to go so far as to undermine the doctrine laid down in *Ex parte Milligan*,

<sup>71</sup> (1919), 251 U. S. 146.

<sup>72</sup> *Tiaco v. Forbes* (1913), 228 U. S. 549.

<sup>73</sup> *Johnson v. Jones* (1867), 44 Ill. 142.

<sup>74</sup> *Griffin v. Wilcox* (1863), 21 Ind. 370.

<sup>75</sup> 12 Stat. 755, amended by 14 Stat. 46.

<sup>76</sup> *Mayor v. Cooper* (1867), 6 Wall. 247; *Bean v. Beckwith* (1873), 18 Wall. 510 and (1878), 98 U. S. 266; *Mitchell v. Clark* (1883), 110 U. S. 633.

since, as Professor Willoughby remarks,<sup>77</sup> it appears that the court justified an act of spoliation in loyal territory on the basis, not of necessity, but of Congressional sanction.

There have been many decisions on the liability of officers and soldiers for their acts during a period of martial rule. The principles of law seem to be as follows. An officer exercising a discretionary authority is responsible for acts of bad faith, but not for errors of judgment.<sup>78</sup> When, on the other hand, he acts outside his lawful authority, he must be prepared to prove the necessity for his acts; good intentions will palliate but not excuse a violation of private rights.<sup>79</sup> A subordinate is justified for obeying in good faith an order within the lawful authority of his senior.<sup>80</sup> For obeying an illegal order he is, in principle, jointly liable.<sup>81</sup> But where the subordinate was only an obedient and passive participant in an act not patently unlawful, he escapes from the liability, which attaches exclusively to his superior.<sup>82</sup> For a subordinate who in no wise acted as a principal, the question is, Was the act commanded such as a man of ordinary understanding would have known to be wrong? If not, the subordinate should not be held liable.<sup>83</sup>

To conclude: Under the American constitutional system there is committed to no branch of government a discretionary authority to ordain the suspension of the guarantees of the Constitution. Nor can such a situation legally be brought into being

<sup>77</sup> *Constitutional Law*, II, 1253. This decision was condemned by Hare, *Constitutional Law*, II, 981. Judge Advocate General G. Norman Lieber held that the decision meant nothing more than that Congress could legalize retrospectively what it might have authorized in the first instance. *North American Review*, vol. 163, p. 557.

<sup>78</sup> *Jenkins v. Waldron* (1814), 11 Johnson (N. Y.) 114, 121; *Dinsman v. Wilkes* (1849), 7 How. 89, and (1851), 12 How. 390.

<sup>79</sup> *Mitchell v. Harmony*, *supra*; *Milligan v. Hovey* (1871), Fed. Case No. 9605; *McCall v. McDowell* (1867), 1 Abbott (U. S.) 212.

<sup>80</sup> *Despan v. Olney*, *supra*.

<sup>81</sup> *Little v. Barreme* and *Jones v. Seward*, *supra*; *Commonwealth v. Blodgett* (1846), 12 Metcalf 56.

<sup>82</sup> So held as to Capt. Douglas in *McCall v. McDowell*, *supra*; *Riggs v. State* (1866), 3 Coldwell (Tenn.) 85; *Queen v. Smith* (1900), 17 Supreme Court Reports, Cape of Good Hope, 561.

<sup>83</sup> *United States v. Clark* (1887), 31 Fed. 710.



by the circumlocution of declaring "martial law." But martial rule may in fact result from enforcing the constitutional mandate that the laws be executed, insurrections suppressed, and invasions repelled, as well as from an exercise of the power to wage war.

Necessity is the criterion of the legality of any measure of martial rule. Of this necessity the political branches of the government, usually the executive, will be the first judge. But an individual who is aggrieved may carry his case into court and have the necessity passed upon judicially. It has been seen that the courts of the British Empire, once they are satisfied that war actually rages in the place where the act complained of was committed, will postpone an examination of its propriety until the termination of hostilities. The last word which the legislature in the United States can pronounce in a case of martial rule may take any of the following forms: complete indemnity for criminal acts; a statute limiting reasonably the time within which civil suits may be brought; and finally a reimbursement for any judgments awarded or fines imposed upon one who has administered martial rule.<sup>84</sup>

In the *Milligan* case it was said that punitive martial rule could not legally arise from a threatened danger; that the exigency must be such as to close the courts. It has been argued that this proposition is too inflexible. The fact that the courts are exercising their jurisdiction without physical obstruction should be presumptive, but not conclusive, of a condition of peace. As necessity creates martial rule, so it limits its conduct and duration. The moment that the authority of the United States (or of a state) can be maintained by civil power, the military should revert to its normal subordination.

Many unfounded opinions are widely entertained as to the law governing martial rule in the United States. Experience shows that "martial law" may be invoked to cover iniquities wholly foreign to the spirit of American constitutional government. On the other hand, military power may lawfully be em-

<sup>84</sup> This latter was done in favor of General Jackson years after he had placed New Orleans under "martial law." Bassett, *Life of Andrew Jackson*, 745.

ployed to secure to the people the promise of ordered liberty. It is greatly to be desired that views on this subject be clarified, to the end that the citizen may know the extent of his rights and that civil and military authorities may know the limitations of their powers.

## PUBLIC LAW IN THE STATE COURTS IN 1927-1928

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### DEPARTMENTS OF GOVERNMENT

#### I. THE LEGISLATURE

*Special Session—Power to Propose Constitutional Amendments Not Included in Governor's Call.* In 1926 a special session of the Pennsylvania legislature proposed an amendment to the state constitution in the form of a new section, although the subject-matter of this amendment was not referred to in the governor's proclamation calling the session. In a taxpayer's action to prevent the submission to the people of this proposal it was alleged that the proceeding was in violation of Art. 3, Sec. 25, of the constitution of Pennsylvania, which provides: "When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session." In *Sweeney v. King*<sup>1</sup> the state supreme court held that a resolution proposing a constitutional amendment is not "legislation" within the meaning of this clause. In reaching this conclusion it relied heavily upon its earlier decision in *Commonwealth v. Griest*<sup>2</sup> in which it had held that a constitutional amendment is not "legislation" which must be submitted to the chief executive for his approval, a doctrine well established both in state and federal courts. An opposite result on the principal question was reached by the supreme court of California in *People v. Curry*.<sup>3</sup> Here the restriction upon a called session of the legislature was held to preclude the proposal of a constitutional amendment. The purpose of the restriction was declared to be to regulate the duration of the session and keep down expenses, and this purpose, it was held, ought not to be defeated by a strained or highly technical interpretation. While the court recognized that in proposing an amendment the legislature was not legislating in a strict sense, it took the view that it was nevertheless performing a legislative function. Attention may be called in this connection to the impeachment cases, commented upon earlier in this *Review*,<sup>4</sup> in which it was held in

<sup>1</sup> 137 Atl. 178, March, 1927.

<sup>2</sup> 196 Pa. 396, 46 Atl. 505, 1900.

<sup>3</sup> 130 Cal. 82, 62 Pac. 516, 1900.

<sup>4</sup> Vol. xix, p. 574.

New York<sup>5</sup> and Texas<sup>6</sup> that restrictions upon special sessions similar to that in the Pennsylvania constitution do not prevent such sessions from proceeding, naturally without gubernatorial suggestion, to the impeachment of the governor.

*Delegation of Legislative Power.* In an advisory opinion the supreme court of Maine<sup>7</sup> declares that no unconstitutional delegation of legislative power is involved in a state statute which is to become null and void upon the repeal or amendment of a federal statute. The act in question was an estates-tax law designed to obtain the credit allowed under the federal Revenue Act of 1926.<sup>8</sup> This was to become void if Congress repealed the federal estates-tax law or repealed the provision for credit of taxes paid to the several states not exceeding eighty per cent of the tax now imposed.

*Initiative and Referendum.* A freak result is reached under the direct legislation provisions of the constitution of Nevada in the case of *Tesoriere v. Second Judicial District Court*<sup>9</sup> holding the three-months divorce law of Nevada passed in March, 1927, not subject to referendum. The referendum in Nevada may be invoked upon acts passed by the legislature upon the filing of a ten per cent petition. If the act is adopted it may not be overruled, annulled, set aside, suspended, etc., save by direct vote of the people amounting to a majority of those voting at a general state election. The clauses dealing with the initiative provide for the indirect type, set in action also by a ten per cent petition, whereby the initiated measure goes first to the legislature. If passed, it becomes law, subject to referendum petition; if rejected or ignored by the legislature, it must be submitted to the people. The legislature, if it rejects the measure, may submit a different proposal dealing with the same subject, which is presented to the voters in competition with the initiated bill. To become law, an initiated act needs a majority of the votes cast upon it. When passed, it cannot be annulled, set aside, or repealed by the legislature within three years.

In 1920 an initiated measure dealing with marriage and divorce went to the legislature, which rejected it and submitted a substitute establishing a six months' residence for divorce. In a special election

<sup>5</sup> *People ex. rel. Robin v. Hayes*, 143 N. Y. Suppl. 325 (1913); appeal denied by court of appeals, 106 N. E. 1041.

<sup>6</sup> *Ferguson v. Maddox*, 263 S. W. 888, 1924.

<sup>7</sup> *In re Opinion of Justices*, 137 Atl. 50, March, 1927.

<sup>8</sup> Act of Feb. 26, 1926. 44 Stat. at L. 69

<sup>9</sup> 258 Pac. 291, August, 1927.

in December, 1922, the people rejected the initiative proposal and adopted that of legislative origin. In 1927 the legislature amended this act, as above noted, by reducing the residence period for divorce to three months. It was the attempt to subject this act to referendum that was blocked by the decision under discussion. The act of 1922, being an initiated law, i.e., enacted under the clauses governing the initiative, could be amended by the legislature after three years. The amendment of such an initiative act is not subject to referendum, since by the adoption of the initiative it is not the intention of the people to curtail the power of the legislature over initiated measures except in such manner and to such extent as is expressly stated in Sec. 3. In other words, the three-months divorce law could be passed by the legislature, since it was technically a mere amendment to an initiative measure, and it could not be subjected to referendum, since it did not fall technically in the closely defined class of measures to which the referendum is made applicable. Thus under a system supposed to afford the maximum measure of popular control we find the legislature able to undo the work accomplished by a direct popular vote, while the people themselves are denied all opportunity to pass judgment on such action.

## II. THE COURTS AND JUDICIAL POWER

*Requirement of Extraordinary Majorities for Invalidating Statutes.* Two more cases have been added to the list of those in which Ohio statutes have been held valid by a minority of the supreme court of the state. It will be remembered that the constitution of Ohio has, since 1912, contained the stipulation, "No law shall be held unconstitutional and void by the supreme court of the state without the concurrence of at least all but one of the judges," except when the court of appeals has also held the act void.<sup>10</sup> Those who favor Senator Borah's proposal to forbid the Supreme Court of the United States to invalidate acts of Congress unless seven of the nine justices concur will do well to study with care the actual operation of the Ohio rule. In *State ex rel Jones v. Zangerle*,<sup>11</sup> we have a state law increasing the compensation of common pleas judges for services rendered outside the counties in which they are elected held valid. Three judges believed it valid; four believed it invalid. The opinion of the court is

<sup>10</sup> Art. 2, Sec. 4.

<sup>11</sup> 159 N. E. 564, December, 1927.

written by one of the three judges. It ends with the comment: "While members of this court deplore such a constitutional provision—one which permits judicial control over grave constitutional questions by a minority vote—the fault lies, not in the court, but in the constitutional provision which produces such a result." Even more confusing results arose in the case of *Fullwood v. City of Canton*,<sup>12</sup> which involved the validity of a municipal ordinance previously sustained by the court of appeals. Only two members of the state supreme court believed the ordinance valid; five members believed it invalid. Three judges held that the rule requiring the concurrence of all but one judge to invalidate a law applies to municipal ordinances as well as to statutes; four judges held that the rule is inapplicable to municipal ordinances. But two of these four judges were the two who believed the ordinance valid, and they could not, therefore, consistently join in a judgment of reversal. Accordingly, to quote the *per curiam* opinion handed down: "There being more than one member of this court holding the ordinance to be constitutional, and there not being as many as four members of this court who hold that an ordinance is not a law, who are at the same time concurring in a judgment of reversal, it follows that there is an insufficient number of judges concurring upon the points of law necessary to a reversal, and the judgment of the court of appeals must be affirmed." Other cases of statutes held valid by minority votes of the Ohio<sup>13</sup> and North Dakota<sup>14</sup> courts have been referred to previously in the *Review*.<sup>15</sup>

*Declaratory Judgment.* A unique illustration of the practical utility of declaratory judgment legislation is afforded by the Virginia case of *Moore v. Moore*.<sup>16</sup> Some doubt had been expressed by the attorney-general of the state as to the legality of an increase of \$1,000 in the compensation of Moore, the state auditor. Unwilling to determine the question of his own compensation, Moore sued under the declaratory judgment act for a mandamus to compel himself as auditor to issue a warrant to himself as a state employee. The court held the proceeding a proper one under the act and issued the mandamus.

*Partial Invalidity of Statutes.* An apt statement of the familiar doctrine governing the severability of a statute part of which is in-

<sup>12</sup> 158 N. E. 171, March, 1927.

<sup>13</sup> *Barker v. City of Akron*, 121 N. E. 646, 1918.

<sup>14</sup> *Daly v. Beery*, 178 N. W. 104, 1920.

<sup>15</sup> Vol. xv, p. 409.

<sup>16</sup> 137 S. E. 488, March, 1927.

valid seems worth quoting from the case of *City of Milwaukee v. Diller*.<sup>17</sup> The void portion of the act may be deleted "unless it was an inducement for the enactment of the rest."

*Contempt of Court.* Several cases of contempt of court may be noted, not because they announce new principles, but because they throw light upon the wide and varied scope of this highly important judicial power. In *State v. Shumaker*<sup>18</sup> the superintendent and attorney of the Anti-Saloon League of Indiana were held guilty of contempt of the state supreme court in publishing and circulating pamphlets and periodicals attacking the court and its judges as being under the influence of the liquor interests. The matter in question contained, among other things, the statement, "We hope the next election will give us a supreme court that will be dry and not wet." This was deemed not only an assault upon judicial integrity and dignity but also an attempt to undermine popular confidence in a body before which some hundred liquor cases were at the time pending. A very long opinion is written to establish the guilt of the defendants and also to clear the court of the charges which had been made against it.

In the case of *In re Stolen*<sup>19</sup> a petition in the nature of a plea for clemency filed by a local bar association in behalf of a former judge shown guilty of highly questionable practices and disbarred as a result was excoriated by the supreme court of Wisconsin as an undue and reprehensible attempt to influence the court in the exercise of its judicial discretion. While called by its authors a brief filed *amici curiae*, the court deemed the document merely a sentimental appeal throwing no light upon the facts or the law involved. "If sixty members of the bar," declared the court, "may thus petition the court with reference to matters pending before it, then sixty plumbers cannot be denied the same privilege." The term contempt of court was not actually used, although there can be no doubt as to the court's meaning. No punishment was imposed. The idea that freedom of speech or petition was impaired was rejected.

In *Ex parte Sturm*,<sup>20</sup> a newspaper reporter was held guilty of contempt of court for deceitfully surrendering a blank plate when ordered by the court to give up a picture, taken in the court room, of a prisoner on trial for murder. The picture had been taken immediately before

<sup>17</sup> 216 N. W. 837, December, 1927.

<sup>18</sup> 157 N. E. 769, August, 1927.

<sup>19</sup> 216 N. W. 127, November, 1927.

<sup>20</sup> 136 Atl. 312, January, 1927.

the trial judge issued his order barring the taking of such pictures in the court room. It was later published in a daily newspaper. There was held to be no impairment of legitimate freedom of the press in this action.

### CIVIL RIGHTS

#### I. RIGHTS OF PERSONS ACCUSED OF CRIME

*Ex Post Facto Laws.* Is a constitutional amendment ex post facto as applied to a prior offense which reduces the size of the grand jury from twenty-one to twelve and permits indictment by eight of the twelve in place of twelve of the twenty-one? The supreme court of New Mexico in *State v. Kavanaugh*<sup>21</sup> held not. The important question is whether the defendant had any substantial right at the time of the crime which the amendment took away from him, and the court concluded that he had none. "It is not clear," said the court "how he has been placed at any disadvantage" by the change in the composition of the grand jury. It did not change his acts from innocent to criminal; it did not augment his crime, change the punishment for it, or alter the legal rules of evidence to his detriment. The court relies heavily upon *Hallock v. United States*,<sup>22</sup> decided in the federal circuit court of appeals, which declared that the right to be indicted by a grand jury does not relate to any particular number, and that the empanelling and precise number of jurors are procedural matters. A dissenting opinion in the *Hallock* case pointed out that under the change fewer would need to dissent from the indictment to block it than before, an argument which had seemed valid to the Supreme Court of the United States in considering the analogous reduction in the number of trial jurors necessary to a verdict in *Thompson v. Utah*.<sup>23</sup> Nor is this argument met by the statement of the court in the present case that "if it be said that there is a smaller number from which to secure dissenters it will be observed that five is a smaller percentage of twelve than ten is of twenty-one."

*Jury Trial.* In *Weaver v. Cuff*<sup>24</sup> a South Dakota statute specifically authorized by a state constitutional provision and permitting a civil jury to render a verdict by a vote of ten out of twelve is upheld. The allegation that the Seventh Amendment is violated is rejected under

<sup>21</sup> 258 Pac. 209, May, 1927.

<sup>22</sup> 185 Fed. 417, 1911.

<sup>23</sup> 170 U. S. 343.

<sup>24</sup> 216 N. W. 600, December, 1927.



the doctrine of *Barron v. Baltimore*.<sup>25</sup> Then the interesting point is urged that a verdict by less than twelve jurors is incompatible with a republican form of government. Curiously enough, instead of dismissing this argument as inapposite under the firmly established doctrine of the Supreme Court of the United States in *Pacific States Tel. & Teleg. Co. v. Oregon*,<sup>26</sup> that the question whether a state government is republican in form is political and not judicial, the South Dakota court proceeds to argue the question on its merits. It holds that a trial by jury is not an essential element of a republican form of government. This is shown by the fact that in England, under a monarchical form of government, there is trial by common law juries in civil cases, while in France, under a republican form of government, there is no jury trial in civil cases. This reasoning is commended to those students of political thought who have been interested in determining the nature of a republican form of government.

*Due process in Criminal Procedure.* A phase of the famous Baumes laws of New York, enacted in 1926, came under review in *People v. Gowasky*.<sup>27</sup> The act provides for the imposing of heavier penalties for third and fourth felonies, fourth offenders being sentenced to life imprisonment. The rule that heavier punishment may be meted out to those previously convicted of felonies had long been law in New York. But in *People v. Sickles*,<sup>28</sup> it had been held that the state not only must allege such previous convictions in the indictment but must prove them on trial in order to convict the defendant as a second offender. The Baumes Act made it unnecessary to charge previous convictions in the indictment or to prove them at the trial. They could be alleged after conviction and made the basis of sentence. The defendant may admit such convictions. If he does not do so, they must be proved before a separate jury. In this case the trial judge failed to inform the defendant of his right to a jury trial on the question of his identity as the basis of showing previous convictions. This is held, however, to be waived by his admission of identity and previous conviction, and no denial of due process of law is found. The defendant had been induced to plead guilty to a lesser degree of burglary than that charged in the indictment, on the supposition that he would receive a lighter sentence, and then found himself sentenced to life imprisonment on

<sup>25</sup> 7 Peters 243.

<sup>26</sup> 223 U. S. 118.

<sup>27</sup> 155 N. E. 737, February, 1927.

<sup>28</sup> 156 N. Y. 541, 51 N. E. 288, 1898.

the basis of his six previous convictions. While cautioning prosecuting officers against making such false or mistaken representations in the future, the court held that the trial judge was without discretion in the imposition of sentence. The fact that the sentence of life imprisonment for fourth offenders works apparent injustice and hardship in particular cases is declared to present no constitutional question.

## II. RELIGIOUS EQUALITY—SECTARIAN SUPPORT

Two cases raised the question of the validity of a rule requiring the reading of the King James version of the Bible in the public schools. In *Kaplan v. Independent School District of Virginia*,<sup>29</sup> the Minnesota supreme court, following the weight of authority, holds that compulsory Bible reading without comment, from which pupils may upon request be excused, does not impair religious equality nor involve sectarian support. A dissenting opinion emphasizes the stigma which is bound to attach to children excused under such circumstances. In the Colorado case of *Vollmar v. Stanley*,<sup>30</sup> the Bible reading without comment was upheld, but a rule forbidding pupils to withdraw during such reading was held void on the ground of violation of the Fourteenth Amendment. Relying upon the cases of *Meyer v. Nebraska*<sup>31</sup> and *Pierce v. Society of Sisters*,<sup>32</sup> the court declared that the "right of parents to select within limits what their children shall learn is one of the liberties guaranteed by the Fourteenth Amendment. . . . It follows from the above that children cannot be compelled to take instruction not essential to good citizenship, and so, unless we hold the reading of the King James Bible to be such [which the court is unwilling to do], we cannot say that the board had power peremptorily to require attendance upon it." The implications of this last statement with reference to the control of school authorities over a school curriculum are very interesting.

In the Pennsylvania case of *Collins v. Martin*<sup>33</sup> an appropriation of \$1,000,000 to pay for medical treatment of indigent sick or injured in hospitals not owned by the state is held to violate the state constitutional prohibition against appropriating state funds "for charitable, educational, or benevolent purposes, to any person or community or

<sup>29</sup> 214 N. W. 18, April, 1927.

<sup>30</sup> 255 Pac. 610, May, 1927.

<sup>31</sup> 262 U. S. 390. See comment in this *Review*, vol. xviii, p. 69.

<sup>32</sup> 268 U. S. 510. See comment in this *Review*, vol. xx, p. 98.

<sup>33</sup> 139 Atl. 122, June, 1927.

to any denominational or sectarian institution, corporation, or association." The attack here made was on the payment to the St. Agnes Hospital, a Catholic institution, of three dollars per day for care extended under the terms of the act. The fact that the payment is in reality compensation for services which the state would otherwise need to extend or pay for directly does not answer the objection that the money actually goes to an institution under sectarian control. In an earlier case, *Collins v. Kephart*,<sup>34</sup> appropriations made directly to sectarian hospitals with the same end in view was held void for the same reasons.

#### THE FOURTEENTH AMENDMENT

##### I. EQUAL PROTECTION OF THE LAWS

*Race Discrimination.* An Atlanta ordinance forbade colored barbers to serve white women, white girls, or white children under fourteen years of age, and provided fine or imprisonment as a penalty for violation. This is held in *Chaires v. City of Atlanta*<sup>35</sup> to be a denial of due process of law and of the equal protection of the laws. The ordinance cannot be justified on the theory underlying the usual race segregation laws in the South. The contention urged in its support that a large percentage of the colored race are afflicted with a highly infectious disease does not support a classification which is based, not upon the existence of disease, but upon race and color. Under such a rule, colored barbers free from disease are arbitrarily denied the right to engage in a legitimate and useful occupation.

Negroes and whites in the city of Dallas, Texas, entered into agreement as to the residence of members of the two races in certain parts of the city. Thereupon the board of commissioners of the city passed an ordinance punishing the breaking of this agreement by a fine of from five dollars to two hundred dollars per day for each day the premises in the district are occupied in violation of the agreement. In *Liberty Annex Corporation v. City of Dallas*<sup>36</sup> the Texas court of civil appeals held the penal provision of this ordinance void under the doctrine of *Buchanan v. Warley*,<sup>37</sup> while the agreement itself was good under the theory of *Corrigan v. Buckley*.<sup>38</sup> In *City of Dallas v. Liberty*

<sup>34</sup> 271 Pa. 428, 117 Atl. 440, 1921.

<sup>35</sup> 139 S. E. 559, September, 1927.

<sup>36</sup> 289 S. W. 1067, December, 1926.

<sup>37</sup> 245 U. S. 60.

<sup>38</sup> 271 U. S. 323. See comment in this *Review*, vol. xxi, p. 80.

Annex Corporation<sup>39</sup> the Texas commission of appeals held that the ordinance could not in any case apply to land not covered by the agreement, and that the agreement was enforceable by civil process, even though its breach could not be punished as a criminal act.

In *Rice v. Gong Lum*<sup>40</sup> the supreme court of Mississippi had held that no denial of equal protection of the law was involved in an act which required a Chinese pupil to attend a negro school. This has been affirmed in *Gong Lum v. Rice*<sup>41</sup> by the Supreme Court of the United States. In the recent case of *Bond v. Tj Fung*<sup>42</sup> such segregation of Chinese pupils is alleged to violate the Burlingame treaty of 1868 by which Americans and Chinese are reciprocally guaranteed the privileges of the public educational institutions" which are enjoyed in the respective countries by the citizens or subjects of the most favored nation." This is not dealt with by the court, since it was not properly pleaded. It seems clear, however, that the contention is groundless. Under the Mississippi act Chinese subjects are accorded the same rights as negroes who are American citizens, and it would seem difficult from the clause of the treaty to argue that Chinese subjects are entitled to privileges which may lawfully be denied to American citizens. Objection is made in the present case that the schools for negroes are much inferior to those for white children, that the negro teachers are not so able and the instruction not so good, and that this amounts to a denial of the equal protection of the law on a showing of facts not presented in the earlier case. To this the reply is made: "We belong to that class of people who believe that no two things are created exactly alike. Things are similar to each other. So it is with the schools. They have a similarity, but it is certain that no two schools in Mississippi or any other state are exactly alike. The testimony of the county superintendent of education in this case shows that equal facilities are furnished the two races, white and colored, and in our opinion that is all that is required under the Fourteenth Amendment."

In *Applegate v. Lum Jung Luke*<sup>43</sup> the alien land law of Arkansas, similar in its provisions to the laws of the Pacific coast states,<sup>44</sup> was

<sup>39</sup> 295 S. W. 591, June, 1927.

<sup>40</sup> 104 So. 105, 1925.

<sup>41</sup> 275 U. S. 78.

<sup>42</sup> 114 So. 332, October, 1927.

<sup>43</sup> 291 S. W. 978, March, 1927.

<sup>44</sup> These cases were discussed in this *Review*, vol. xix, p. 60.

found unconstitutional, not because of any federal constitutional disability, but because it violated a unique provision in the constitution of the state to the effect that "no distinction shall ever be made by law between resident aliens and citizens in regard to the possession, enjoyment or descent of property."

*Equal Protection and the Police Power.* That a classification established in the exercise of the police power and valid when made may become void as a result of change of circumstances is established in *Vigean v. Postal Telegraph Cable Co.*<sup>45</sup> A Massachusetts statute of 1851 established an absolute liability in damages to a person injured in person or property by the poles, wires, or other apparatus of telegraph companies. The act was admittedly valid when enacted. The defendant successfully contends that this now involves a denial of the equal protection of the laws, since no such liability is imposed on telephone, electric light, power, and street car companies which have since come into existence.

*State v. Shady*<sup>46</sup> involves the validity of a criminal prosecution under a statute forbidding the stealing of electric current by tapping wires owned by corporations. The fact that wires owned by others than corporations are not included does not make the classification void. "A statute for the protection of a particular class is not void simply because the specified class is not all-inclusive or might have been enlarged so as to include others equally meriting the same protection."

An interesting, though by no means new, problem of classification is dealt with in the Wisconsin case of *Sammarco v. Boysa*,<sup>47</sup> sustaining an ordinance forbidding the keeping of automobiles in wooden buildings under specified conditions, but excepting certain classes of existing garages from the operation of the rule. In several states, ordinances of this kind have been held void on the ground of the denial of the equal protection of the laws, because the existing garage is given an immunity denied to those not yet built. The court in the present case holds valid the placing of existing and future buildings in separate classes, since in the case of the former the investment has already been made and the loss arising from the prohibition will consequently be greater than in the latter case. Attention is called to the fact that ordinances creating zones against wooden buildings are

<sup>45</sup> 157 N. E. 651, July, 1927.

<sup>46</sup> 136 Atl. 26; same case 138 Atl. 777, October, 1927.

<sup>47</sup> 215 N. W. 446, October, 1927.

always prospective, as are the public regulations dealing with plumbing and electric fixtures. The same principle applies to regulations of building heights. Says the court: "To assert that the ordinance here under consideration denies the equal protection of the laws would not only defeat the purpose of zoning laws in general, but it would amount to a declaration that society is powerless to prevent the growth and development of an evil without completely stamping out the evil."

While the police power may properly require the licensing and registration of engineers as a protection against fraud and incompetence, a statute requiring such licensing of Pennsylvania engineers, but exempting those not resident in the state and having no place of business in the state, and also officers and employees of corporations engaged in interstate commerce, establishes an arbitrary and unconstitutional classification. This is held in the case of *Commonwealth v. Humphrey*.<sup>48</sup>

Two cases hold that laws forbidding the sale of patent medicines in the original packages by any except registered pharmacists involve arbitrary discrimination against unregistered vendors when the sale of such patent medicines by authorized druggists remains free from any police regulations. The South Dakota court in *State v. Wood*<sup>49</sup> declares: "It would seem to be an unreasonable exercise of the police power to limit sales to the profession without requiring anything of the profession to safeguard the public health." In the Arizona case of *State v. Childs*<sup>50</sup> there is a careful review of the conflicting authorities on this point, and the conclusion is reached that the "attempted regulation on its face apparently has no effect except to grant a monopoly of the sale of certain articles to a special class under conditions which can in no manner benefit the public." Both opinions agree that the restriction involved would be permissible if any duty or responsibility was imposed on the registered pharmacists in respect to the sale of patent medicines.

An Arkansas game law which restricts resident licenses to hunt and fish to citizens having the qualifications of voters is held in *State v. Johnson*<sup>51</sup> to involve an arbitrary classification. The defendant had been a citizen of the state for several years, but had never paid a poll

<sup>48</sup> 136 Atl. 213, January, 1927.

<sup>49</sup> 215 N. W. 487, October, 1927.

<sup>50</sup> 257 Pac. 366, June, 1927.

<sup>51</sup> 291 S. W. 89, February, 1927.

tax. The qualifications for voting are held to have no relation to the purpose of the classification which is here set up. The classification is "devoid of rhyme, reason, or justice."

*Miscellaneous Classification.* An Oregon act provided that only persons owning more than five thousand square feet of land may vote to determine whether a tunnel district shall be formed. Upon the formation of the district, bonds were to be sold which should be a lien on all lands within the district, and all such lands were to be taxed according to their assessed valuation. This discrimination in respect to the right to vote is held arbitrary and void in the case of *In re Oregon Tunnel District No. 1*.<sup>52</sup> If the tax was to be levied upon the basis of the land areas, the classification might conceivably be reasonable, but since the taxes are laid according to value the classification is unreasonable. The fact that the result of the election in the present case would have been the same had all the owners barred from voting been allowed to vote does not save the act, since the discrimination is a continuing one which would apply in future elections.

A Tennessee act of 1923 required, under penalty of fine, persons in specified counties who owned wagons and teams to furnish them four days annually for service on the county roads. The plaintiff in error was imprisoned for failure to pay the fine imposed for non-compliance. He attacked the law as discriminatory because no requirement to furnish services was imposed on those possessing one-horse wagons, automobiles, or trucks, or on those residing in towns. The court in *Williams v. State*<sup>53</sup> held the classification reasonable and rejected the contention that imprisonment for failure to pay a fine constitutes imprisonment for debt. A statute in similar terms had been upheld against a more general attack in *Galloway v. State*,<sup>54</sup> commented on previously in the *Review*.<sup>55</sup>

## II. DUE PROCESS OF LAW—THE POLICE POWER

Of the numerous cases decided in the state courts during the past year involving the application of the due process test to the legislative exercise of the police power, a few of the more striking may be

<sup>52</sup> 253 Pac. 1, February, 1927.

<sup>53</sup> 293 S. W. 757, May, 1927.

<sup>54</sup> 139 Tenn. 484, 202 S. W. 76, 1918.

<sup>55</sup> Vol. xii, p. 475.

commented on. Individually, they are of small importance. Viewed as interesting samples, they throw light upon the range of legislative ingenuity and upon the variety in the method of judicial approach to this always important problem.

Perhaps the most interesting case of the group is that of *John F. Jelke Co. v. Emery*,<sup>56</sup> in which the supreme court of Wisconsin, after a careful analysis of state and federal authorities, holds unconstitutional a state statute forbidding the manufacture and sale of oleomargarine. The statute forbade the manufacture or sale of "any article, product, or compound which is or may be used as a substitute for butter and which is made by combining with milk or milk fats or any of the derivatives of either any fat, oil, or oleaginous substance or compound thereof other than milk fat." This amounts to a complete ban on all oleomargarine, since it is agreed that no commercial product has been, or can be, made which does not contain some milk. The court takes judicial notice of the fact that oleomargarine is a wholesome and nutritious food, and not harmful. State administrative authorities testify that no complaints have been filed indicating that it has been fraudulently sold as butter. With more frankness than has characterized counsel in the earlier oleomargarine cases, it was urged in favor of the law that it was necessary in order to protect the Wisconsin dairy industry from unfair competition. To this the court replied that it had supposed that the state constitution was devised to prevent the legislature from doing just that sort of thing. Such protection of the dairy industry is no more legitimate than would be a prohibition of the sale of sheep to protect the beef-cattle industry or a ban on cement as an aid to the lumber trade. It seems obvious that had this been a case of first impression the court would have felt small compunction in invalidating the act. It is, however, confronted with the case of *Powell v. Pennsylvania*,<sup>57</sup> decided in 1885, in which the Supreme Court of the United States upheld a Pennsylvania statute of almost identical terms. In an interesting analysis of this and later federal cases dealing with restrictions on the oleomargarine business the Wisconsin court reaches the conclusion that the *Powell* case, which assumed oleomargarine to be usually unhealthful, has been virtually overruled by later cases, *Schollenberger v. Pennsylvania*,<sup>58</sup>

<sup>56</sup> 214 N. W. 369, June, 1927.

<sup>57</sup> 127 U. S. 678.

<sup>58</sup> 171 U. S. 1.



and *Collins v. New Hampshire*,<sup>59</sup> which assume that oleomargarine need not necessarily be harmful and that only that which is actually unwholesome or deceitfully colored may be excluded or proscribed. The Powell case "remains authority only for the proposition that the manufacture and sale of adulterated, unhealthful, deleterious articles may be prohibited."

In *Young v. Mall Investment Co.*<sup>60</sup> an ordinance of the city of Minneapolis is held void which requires the owner of land who excavates it to protect adjoining land and buildings from falling in. At common law the right of lateral support applies only to land and not to buildings on it.<sup>61</sup> To make the adjoining owner protect the adjacent buildings would place a heavy burden on property. A lot owner, by erecting heavy buildings, could abridge his neighbor's use of his own land, and thus the rights of the prior occupant would be superior to those of the latter.

The supreme court of Maryland, in *Spann v. Gaither*,<sup>62</sup> holds arbitrary and unreasonable a regulation making it a misdemeanor for laundries to collect or deliver laundry between midnight Saturday and six in the morning on Monday, in so far as it applied to the early hours of Monday. No legitimate police power object is apparent to justify such a restriction. In *Seattle v. Ford*,<sup>63</sup> a Seattle ordinance forbidding the hawking of merchandise on private premises without the payment of a license fee of ten dollars a day is held an arbitrary restraint of property rights. As applicable to streets and public places, however, the regulation is reasonable. Of similar import is the case of *Balesh v. City of Hot Springs*,<sup>64</sup> in which the supreme court found wanting in due process an ordinance, authorized by statute, entirely forbidding the sale of goods by auction.

In *Little v. Smith*<sup>65</sup> a Kansas statute prohibiting the advertising of cigarettes in any newspaper or periodical published and sold in the state was held void as a denial of due process, as a burden on interstate commerce, as a denial of the equal protection of the laws, and as an abridgment of the privileges and immunities of citizens in the several

<sup>59</sup> 171 U. S. 30.

<sup>60</sup> 215 N. W. 840, October, 1927.

<sup>61</sup> *Transportation Co. v. Chicago*, 99 U. S. 635.

<sup>62</sup> 136 Atl. 41, January, 1927.

<sup>63</sup> 257 Pac. 243, June, 1927.

<sup>64</sup> 293 S. W. 14, April, 1927.

<sup>65</sup> 257 Pac. 959, July, 1927.

states. It seems doubtful to the writer whether the comity clause of the federal constitution can properly be invoked in a case like this to guarantee to the citizens of a state an equality of privileges and immunities with those enjoyed by the citizens of the other states. The purpose and application of that clause are rather to prevent a state from denying to citizens of other states the privileges and immunities incident to its own citizenship.

An Illinois decision, *Doe v. Jones*,<sup>66</sup> holds that no legitimate police power purpose is served by a requirement that land surveyors, governmental employees excepted, be licensed. Unlike the professions of architecture and structural engineering, the land surveyor does nothing affecting public safety. In *Betty v. City of Sidney* <sup>67</sup> an ordinance of a Montana city is held wanting in due process which prohibits the repairing of any frame building, within certain zones, which has been damaged to the extent of thirty-five per cent of its assessed value.

While recent decisions have placed the power of municipalities to establish reasonable zoning restrictions upon a firm basis,<sup>68</sup> such regulations may not be altered arbitrarily to the detriment of vested interests without denial of due process. This was held by the Supreme Court of the United States in *Dobbins v. Los Angeles*<sup>69</sup> in 1913, and the same doctrine is applied by the Illinois court in *Western Theological Seminary v. City of Evanston*.<sup>70</sup> A zoning ordinance adopted in 1921 established a zone in which only single-family dwellings, churches, schools and colleges, etc., were permitted. In 1923 the Western Theological Seminary acquired a tract in this district, sold its previous site, and conducted a successful financial campaign for funds to build a chapel, library, assembly room, student dormitories, etc. Permits to erect these buildings were held up, and finally in 1925 the city council amended the zoning ordinance so as to exclude "temples, libraries, schools, and colleges" from the district. While the exclusion could undoubtedly have been effected in the first place, to bar the seminary buildings now, after interests have vested, cannot be defended as an exercise of the police power. No menace to health, comfort, or safety requiring the change can be shown.

<sup>66</sup> 158 N. E. 703, October, 1927.

<sup>67</sup> 257 Pac. 1007, May, 1927.

<sup>68</sup> See *Euclid v. Ambler Realty Co.*, 272 U. S. 365, commented on in this *Review*, vol. xxii, p. 94.

<sup>69</sup> 195 U. S. 223.

<sup>70</sup> 156 N. E. 778, April, 1927.

A Texas statute regulating transactions in real estate and corporate stocks provided: "Whenever a promise . . . has not been complied with by the party making it within a reasonable time, it shall be presumed that it was falsely and fraudulently made, and the burden shall be on the party making it to show that it was made in good faith but was prevented from complying therewith by the act of God, the public enemy, or by some equitable reason." The act is held in *Clem v. Evans*<sup>71</sup> to be wanting in due process because it does not permit rebuttal of the presumption of fraud except by the limited method of showing that compliance with the promise was impossible. The court takes the view that it is only the insincerity of the promisor's promise when made that makes his act fraudulent, and that proof of that lack of intention to defraud must be a complete defense. The Texas commission of appeals recognizes that the Supreme Court of the United States in the recent case of *James-Dickinson Farm Mortgage Co. v. Harry*<sup>72</sup> has taken the opposite view, but it urges that the doctrine announced was not necessary to the decision, and also that the Supreme Court construed the act before it as creating a presumption which could be adequately rebutted.

In *Solomon v. City of Cleveland*<sup>73</sup> an ordinance forbidding fortune-telling was held not to violate the Fourteenth Amendment. It was urged also that the ordinance impaired the freedom of speech and press guaranteed by the First Amendment to the federal Constitution. The Ohio court of appeals, which decided the case, adopts with approval the opinion of the trial judge, who assures us that "it has never been held that such provision [the First Amendment] extends to the privilege of publishing and disseminating baneful and harmful matter," in support of which the case of *Ex parte Rapier*<sup>74</sup> is cited. It may be noted that the undergraduate is not the only one who finds difficulty in applying the doctrine of *Barron v. Baltimore*<sup>75</sup> to pertinent situations.

Of the decisions in which police-power measures are sustained, the most notable is that of *Campbell v. City of New York*.<sup>76</sup> This was a taxpayer's action to restrain the city from making contracts for

<sup>71</sup> 291 S. W. 871, February, 1927.

<sup>72</sup> 273 U. S. 119.

<sup>73</sup> 159 N. E. 121, July, 1926.

<sup>74</sup> 143 U. S. 110.

<sup>75</sup> 7 Peters 243.

<sup>76</sup> 155 N. E. 628, February, 1927.

subway construction which were alleged to be wasteful and illegal. The contracts in question were made in compliance with a law requiring that they should stipulate an eight-hour day and the payment of wages "not less than the prevailing rate for a day's work in the same trade or occupation in the locality. . . . ." A violation of these provisions is made punishable by fine or imprisonment, in addition to the forfeiture of the contract. It is alleged that the terms are vague and uncertain, that bids cannot be made with understanding and will have to be made higher as a protection, and that waste of public money will of necessity result. The invalidity of the statute under the doctrine of *Connally v. General Construction Co.*<sup>77</sup> is especially urged. In an opinion written by Judge Cardozo the law is held valid. The decision confines itself to the portion of the statute regulating the terms of the contracts. There is no requirement of due process of law that municipal contracts "shall be perspicuous and definite." "It is a novel doctrine," the opinion continues, "that there is constitutional immunity against contractual obligations that are ambiguous or doubtful." Whether the *Connally* case would prevent the criminal action provided for breaking the terms of the contract need not be determined in this case, but the suggestion is made that "distinctions of time and circumstance may conceivably exist" which would save the penal provisions of the New York statute.

In the case of *In re Cohen*<sup>78</sup> it is held that no rights of a lawyer under the Fourteenth Amendment, or under the state constitutional guarantees of freedom of the press, are violated by the enforcement, through suspension from practice, of the canon of ethics of the legal profession forbidding lawyers to advertise. A similar result is reached in *Laughney v. Maybury*<sup>79</sup> with respect to a law forbidding osteopaths and chiropodists to employ certain advertising methods. A Michigan statute prohibiting the soliciting of personal injury claims—the familiar evil of "ambulance chasing"—is held to be a legitimate exercise of the police power and not wanting in due process. This is the case of *Kelley v. Boyne*.<sup>80</sup> The claim that the act denies the equal protection of the laws by making the contracts to prosecute personal injury claims void if made with persons who are not lawyers, while such contracts are enforceable if made with lawyers, is rejected by the court. An

<sup>77</sup> 269 U. S. 385, commented on in this *Review*, vol. xxi, p. 86.

<sup>78</sup> 159 N. E. 495, January, 1928.

<sup>79</sup> 259 Pac. 17, September, 1927.

<sup>80</sup> 214 N. W. 316, June, 1927.

Oregon statute making the cost of fighting forest fires a lien on the land on which the fire started is held no denial of due process, even though the cost so levied might exceed the value of the land. The statute is enforceable against a municipality in one of the public parks of which the fire started. This is the case of *State v. City of Marshfield*.<sup>81</sup>

#### EMINENT DOMAIN

In *Paine v. Savage*<sup>82</sup> a statute passed by the legislature of Maine allowing log-haulers to cross private property without being liable for trespass, but only for actual damage, is held to involve an exercise of eminent domain for a private use and consequently to be void. The doctrine of public use here applied is that which makes that term synonymous with "use by the public"—the doctrine followed in most of the states—rather than the more liberal rule which interprets public use in terms of general public benefit. The same test of public use is applied in *Fountain Park Co. v. Hensler*,<sup>83</sup> in which the Indiana supreme court refuses to allow the grant of the right of eminent domain to a Chautauqua company for the purpose of acquiring a site. The act involved in this case was also held bad for arbitrary classification, inasmuch as it purported to apply only to any voluntary association organized for the purpose of maintaining a religious Chautauqua which has been in existence for not less than fifteen years, which holds exercises not less than sixteen days a year, and which has a lease on a tract of land of not less than forty acres. "Arbitrary selection," said the court, "or mere identification, cannot be justified by calling it classification."

In *Jarvis v. Town of Claremont*<sup>84</sup> it is held by the supreme court of New Hampshire that to make the cost of removal of trees blown across the highway a lien against the value of the trees amounts to taking of private property without compensation. In this case the tree was cut into firewood and sold to pay the cost of removal. It made no difference that the tree, without the owner's fault, had become a public nuisance.

#### IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

A striking illustration of the doctrine that the contract clause of the federal Constitution affords no protection to contract rights against a

<sup>81</sup> 259 Pac. 201, September, 1927.

<sup>82</sup> 136 Atl. 664, March, 1927.

<sup>83</sup> 155 N. E. 465, February, 1927.

<sup>84</sup> 139 Atl. 747, December, 1927.

reasonable exercise of the police power is afforded by the case of *People v. Chicago City Railway Co.*<sup>85</sup> In this case a mandamus was issued compelling the company to remove certain of its tracks and trolley poles from their existing location, where they had been placed under the terms of the charter contract, and relocate them so as to conform to the center of the street as widened. The relocation of tracks and poles will cost the company about \$300,000. The court holds that this requirement is made in the legitimate exercise of the police power, which extends to measures to promote public convenience as well as health, morals, and safety.

A very unique and interesting application of the contract clause is made in *Hessick v. Moynihan*,<sup>86</sup> an action brought under the declaratory judgment act of Colorado to test the validity of an act of 1927 forbidding the sale of convict-made goods in competition with free goods. It seems that the state board of correction has been leasing valuable farm lands upon which it carries on a profitable dairy business by convict labor. Recently it bought a canning factory and a vegetable ranch adjacent, from which it is making profits sufficient to pay the purchase price in due time. The revenues which the state will lose by the enforcement of the law in question will amount to about \$100,000 a year. One would suppose that the policy to be followed in the management of the state's penal institutions would be deemed so preëminently a governmental interest to be dealt with in the exercise of the police power that no case could successfully be maintained against the law based on the impairment of contracts. Such, however, is not the fact. The court holds that the enforcement of the law will require the cancellation of leases with third persons, and will entail inability to make payments on the canning plant, which was bought on the understanding that it would be paid for from profits; consequently the act is void as impairing the obligation of these contracts.

<sup>85</sup> 155 N. E. 781, December, 1926.

<sup>86</sup> 262 Pac. 907, December, 1927.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING

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**Governors' Messages, 1928.** It is hardly possible to compile a summary of these messages which will present an entirely fair picture of the separate and complete documents, or of the attitudes of their authors. The novel recommendation, or the out-of-date recommendation—the first trial of the new or the last laying aside of the old—tends to attract attention at the expense of the customary, routine, though perhaps equally important, recommendation. A description of the performance of some state function or an elaborate presentation of the needs of some state institution will ordinarily receive little or no comment, while a precise, definite, concrete, though brief, recommendation is apt to be included. This report seems likely to bear somewhat the same relation to the messages that news bears to life.

The messages of the following governors, delivered to regular sessions of the legislature this year, are reviewed: Flem D. Sampson of Kentucky, Alvan T. Fuller of Massachusetts, Theodore G. Bilbo of Mississippi, A. Harry Moore of New Jersey, Alfred E. Smith of New York, Aram J. Pothier of Rhode Island, John G. Richards of South Carolina, and Harry Flood Byrd of Virginia. Besides, the regular messages of Governors John W. Martin and L. G. Hardman to the legislatures of Florida and Georgia, respectively, in April and June of last year, are included. Special legislative sessions were convened last year or this in at least nine states, and note is taken of the messages addressed to these assemblies in Arizona, Illinois, Iowa, Nevada, New Hampshire, North Dakota, South Dakota, Virginia, and Wisconsin by Governors George W. P. Hunt, Len Small, John Hammill, F. B. Balzar, Huntley N. Spaulding, A. G. Sorlie, William J. Bulow, Harry F. Byrd, and Fred R. Zimmerman, respectively. The legislature of Louisiana meets regularly in the even years, but not until May.

The messages to regular sessions are, in the main, of routine character. Governor Smith begins: "This is the eighth and last annual message I shall present to your Honorable Bodies." His ninety-nine pages review the changes in the government of the state and in its activities during the ten-year period since his first inauguration in 1918. The record furnishes a background for numerous recommendations. Governor Sampson's address covers twenty-five pages, to which he

appends a supplement of thirty-five pages containing the suggestions which he has received from state officials, private organizations, and citizens. One third of Governor Bilbo's vigorous one-hundred-nine-page message is devoted to the subject of a state printing plant for school text-books; and the state's financial condition, highways, and education receive generous attention. Governor Byrd's message takes the form of three "addresses" upon the subjects of Virginia's business government, the educational system of Virginia, and "a program of progress."

*Machinery of State Government.* Proposals for modification of the state governmental organization, either by statute or by constitutional amendment, appeared in eight of the ten regular messages. In Florida, the administrative organization seems still to be in the diversification stage of its evolution, and Governor Martin counsels the separation of an auditing department, a banking department, and a motor vehicle license department from the comptroller's office. Governor Hardman (Ga.) approves departmental consolidation, a single highway commissioner directly responsible to the governor, a four-year term for the latter, and the appointment of a constitution commission. He advised the legislators to recess after the first twenty days of the session for the purpose of studying the problems presented to them. Governor Sampson (Ky.) thinks that "some high-salaried positions about the capitol building held by persons who seldom come to their offices" might be discontinued, inasmuch as the deputies do the work. Once more Governor Fuller urges biennial sessions of the Massachusetts legislature and condemns the appearance of its members as paid counsel before any governmental agency of the commonwealth. Of the elected highway commission of Mississippi, Governor Bilbo says, "We now have no state highway commission, but instead eight district commissioners," who "defeat a coördinated system of highways for the benefit of the whole state." An appointed salaried commissioner, or commission of three, is suggested. He would substitute a state board of charities, mainly appointive, for the present local boards, and stop the practice of unsupervised appropriations to private hospitals. He recommends one central educational authority of eight laymen appointed for overlapping terms of eight years for the purpose of coördinating the higher educational activities of the state with the secondary and elementary schools, this board to appoint a director of higher education of equal rank with the state superintendent of public instruction. A state purchasing agency would, he believes,



eliminate the greatest waste of the people's money. Governor Moore proposes a constitutional convention for New Jersey and an agency to formulate proposed changes.

Re-submission to the electorate of the question of a four-year term for governor, with election in other than presidential years, is urged by Governor Smith, as well as a constitutional prohibition upon all legislation in even years except that for the support of government, unless specifically recommended by the governor. Appropriations would thus monopolize all attention biennially. State senators' and assemblymen's terms should be increased to four and two years, respectively. "The legislature spends too much time passing bills regulating the size of wall-eyed pike and lobsters, and prescribing by law the manner and method of taking and possessing game, fish, birds, fowl, and the like. All this should be done by rule and regulation of the conservation department." From the same viewpoint, Governor Smith criticizes legislative legalization of local improvement bonds. The constitutional initiative is commended; also a state constitutional prohibition of the ratification of proposed amendments of the federal Constitution until after a state-wide popular referendum. The people of South Carolina have twice declared for biennial sessions of the legislature, says Governor Richards, but faithless legislators have disregarded their wishes.

¶ *Primaries and Elections.* Elections received attention in eight messages. Governor Martin (Fla.) would increase the maximum legal campaign expenditure permitted to candidates for state office and extend the privilege of the absent-voting law to electors absent from the state on election day. Without any specification other than the holding of a second primary within ten days of the first, Governor Hardman seeks to "eliminate the undesirable and unfortunate conditions" surrounding elections in Georgia. "Elections are too frequent," Governor Sampson apprises the Kentucky solons; "an election every two years is often enough." Restricted election expenditures and the publication by the state of a campaign bulletin commend themselves to Governor Fuller, who notes the "rapidly growing evil of the control of nominations and elections by large campaign expenditures." No one advised of the abuses that have arisen under the Mississippi absent voters law, Governor Bilbo suggests, can oppose its repeal. The direct primary should not be interfered with, thinks Governor Moore; nor should there be, in any degree, a return to the old convention system. Governor Smith would restore the primary to

state-wide operation in New York and require the publication of campaign expenditures and receipts before, rather than after, election. Governor Pothier informs the lawmakers that many voting districts in Rhode Island contain more than 2,000 qualified voters and asks that the maximum be placed at 1,200.

*Taxation and Finance.* An "iniquitous measure, passed for no other reason than to nullify Florida's constitution, a gross injustice to the people of the state," is Governor Martin's characterization of the federal inheritance tax. All persons handling the money of the state should be required to pay it promptly into the state treasury, he believes, and thus save the state the sum of \$50,000 annually, a recommendation seconded by the governors of Georgia and South Carolina. Governor Hardman calls attention to deficits in the accounts of several Georgia institutions and admonishes the legislature to make adequate provision for the operating expenses of the state. A privilege tax of ten cents a cubic yard upon the sand and gravel taken from the stream-beds of Kentucky would pay for school text-books, thinks Governor Sampson. Special service to special groups should be paid for by them rather than by the taxpayers, says Governor Fuller (Mass.), in a proposal to make more of the activities of the state self-supporting. He favors a gasoline tax of not over two cents a gallon. Governor Bilbo (Miss.) would increase the gas tax to five cents. He deprecates a tendency in recent years to postpone current financial obligations and counsels a revision of the laws relating to assessment and taxation, especially the exemption from taxation of all incomes earned in purely agricultural pursuits. After a year's trial, Governor Moore regards the gas tax as inexpedient for New Jersey. Governor Pothier suggests the advisability of imposing the direct state tax in Rhode Island upon the basis of the amount of local taxes rather than local valuation as more equitable and more conducive to uniformity and thoroughness in local valuations. Radical changes in the South Carolina tax system seem unwise to Governor Richards. To operate effectively the present machinery for the valuation of tangible property, and to reach intangible values through an amendment to the constitution which will permit the classification of property for taxation, are the real needs. "Virginia today occupies the fortunate position of being one of the few states in the Union not seeking revenues from new taxation," asserts Governor Byrd. He would repeal the tax of two per cent now laid upon the estate of a non-resident before his property can be transferred to his beneficiaries, and the tax on shares of stock owned by a

Virginia taxpayer in a non-resident corporation, as well as reduce by ten cents per hundred dollars the tax on capital in business. He notes with satisfaction, as effects of the segregation of state and local revenue, the submergence of friction between localities and an equalization of the tax burden between the local units of the state and the different classes of property.

*Education.* In the opinion of Governor Martin, all interest on state funds should be set aside as a subvention to those common schools of Florida financially unable to operate for at least six months each year. The supervision of rural schools in New York could be much improved by the introduction of the county unit for this purpose, thinks Governor Smith. In the department of education he would provide a bureau for special schools, and would require the same license prerequisites for teachers in the state institutions as for those in the public schools. Governor Pothier thinks that state assistance in financing schoolhouse construction would largely solve the problem of inequality of educational opportunity in the localities of Rhode Island and the inequality in the tax burden for school purposes. Governor Richards (S. C.) again urges the disbursement of school funds on the basis of average daily attendance instead of on that of enrollment, because the latter places a premium upon padded rolls. Adverting to the reduction of white illiteracy to less than three per cent, he complains that the failure to differentiate between the white people and the negroes in this matter is the cause for the injustice that has been done the state and for gross misrepresentation. Governor Hardman (Ga.) favors education of a practical type and commends the research work being done in the experiment stations and the school of technology. After emphasizing Georgia's illiteracy by comparison with Minnesota's 1.8 per cent, he recommends state assistance for schools in poor counties and an accurate local accounting for school money.

In order to make the text-book commission more responsive to the wishes of the Kentucky taxpayers, Governor Sampson would have its recommendations of changes submitted to popular vote, or to the members of the county school boards, for approval. He urges better free schools for the colored children of the state and a standard college for colored youth. He approves executive appointment of the state board of education and the equalization of educational opportunities by means of state appropriations, showing that a fifty-mill levy in some counties will now provide three dollars per pupil and in other

counties as much as forty-six dollars. Governor Bilbo (Miss.) favors a teachers' pension fund; also an eight-months' school throughout the state at state expense if necessary. School and road districts should be coterminous with county areas, he believes. He would employ the requisite number of experts, including psychologists, psychiatrists, and social workers, to examine all retarded and maladjusted children in the public schools. More state support for higher education is recommended by Governor Moore, who says that New Jersey is educating a smaller proportion of her citizens in her own colleges and contributing a smaller proportion of state revenues for the purpose than any other state. Governor Byrd would consolidate the duties of school trustees and county supervisors, thus eliminating 801 officials in Virginia.

*Law Enforcement and the Administration of Justice.* Elimination of delays and reduction of costs in the administration of justice are regarded by Governor Martin as most important objects of legislation in Florida. The necessity of providing a substitute for the justices' courts, whose functioning has been so restricted by decisions of the United States Supreme Court and the highest court of Kentucky, is pointed out by Governor Sampson. Governor Fuller (Mass.) asks legislative consideration of exceptions, appeals, and motions for new trials in capital cases. He wishes to relieve future governors of the "difficulties which were forced upon him in 1927 by zealous defenders of persons convicted of first degree murder." For this purpose he presented a procedural remedy as contained in the recent report of the judicial council. A training school for policemen is proposed, and also the unification of police forces of the commonwealth under state supervision, without unduly interfering with local control. Governor Moore attacks the technicalities of legal procedure and recommends doubling the strength of the state police force of New Jersey. In addition to suggesting the utility of a crime commission for Mississippi, Governor Bilbo proposes that the legislature enact anti-gossip, anti-lying, anti-slander, and anti-libel laws, the remedy in the civil law being altogether inadequate and ineffective to check these evils. He holds that perhaps half of the homicides in the state are caused by encounters resulting from calumny.

Governor Smith presents the novel proposal that persons found guilty in the courts be not sentenced by the judges, but be detained and carefully studied by a board of mental and physical specialists who would fix the penalty—"a modern, humane, scientific" way to

deal with the criminal offender. That most crime in South Carolina may be charged to whisky and the ever-ready pistol is Governor Richards' conviction; yet violations of laws against "bootlegging" and the carrying of weapons are treated as light offenses. Delays of the courts and inequality of sentences are condemned, and a law against the purchase of liquor is suggested. Governor Sampson laments the disgrace that mob violence has brought to Kentucky, and, insisting that one determined official can stand off a mob, demands a law for the removal of lax officers, if none exists. Governor Byrd says: "Lynching must stop." He asks that it be made a state offense to be prosecuted by the attorney-general, that the county or city which permits a lynching be forced to pay damages, and that the governor be authorized to spend what he deems necessary in apprehending the members of a mob. The governor of South Carolina also denounced lynching.

*Local Government.* Restriction of the bonding power of localities seems essential to Governor Martin in order to maintain low interest rates and a ready sale at good prices for the securities of Florida municipalities. Governor Smith proposes home rule for New York's counties, towns, and villages, as well as an amplification and simplification of the home-rule statute for cities. He notes the cost of county government in 1926 as \$47,991,358. "Reasonable people will admit that if these counties were being set up today, no one would think of dividing the state into sixty-two of them." The return of the control over utility contracts to the municipalities of the state is requested, and the grant to them of power to regulate utilities, with the reservation that in the absence of specific request from a municipality, the power should remain with the state commission. Cities should also be permitted to operate public buses. Governor Pothier (R. I.) suggests a survey of the financial methods of cities and towns with a view to securing to them more complete control over the collection of revenue and the establishment of a uniform system of accounting. Both Governor Smith and Governor Moore praise the accomplishments of the Port of New York Authority. The first issue of its bonds is said to be now selling at a premium of eleven points. Speaking of the Boston Elevated Railroad, Governor Fuller says, "Public control" (which should be continued) "has brought the road up from apparent bankruptcy to good condition and service," the common stock from fifty to ninety-five. Additional subways could be partially paid for by betterment assessments. In response to a request from the gover-

nor, sixty-nine gas and electric companies voluntarily reduced their rates. The doctrine of reproduction values would be inequitable in Massachusetts. Deprivation of the right of eminent domain, prohibition of the further issue of stock or bonds, and encouragement of municipal competition are proposed as penalties for companies that refuse to subject themselves to reasonable regulation and supervision by the commonwealth.

*Conservation and Labor.* Governor Smith again proposes a New York state power authority—a public corporation, municipal in character, having no stockholders, empowered to issue bonds exempt from state tax and secured by the improvements made, authorized to develop the water-power of the state, the state retaining the ownership not only of the sources of power but of the development works as well—"the one sure way to get the full benefit of hydroelectric energy for the small storekeeper, the small homeowner, and the people on the farm." No harm can come to the state by a trial. "Nobody can honestly and conscientiously oppose it unless he belongs to that reactionary Bourbon group who are against public ownership or public development of any resources."

Justice to labor in the matter of a fair remuneration is suggested by Governor Sampson (Ky.). Changes in the workmen's compensation laws to lessen the handicap under which aged, crippled, and partially disabled persons now seek employment, due to the feeling of employers that such applicants are more apt to be injured than others, are recommended by Governor Moore (N. J.). In New York the establishment of a minimum wage board for women and minors, with investigative and recommendatory powers, is again proposed, along with the extension to its feasible limit of the one-day-rest-in-seven principle, compensation for all occupational diseases, and the prohibition of temporary injunctions without a preliminary hearing to ascertain the facts. "The use of the big stick in industrial relations is a thing of the past."

*Highways.* The completion of the primary system of highways is the matter of chief interest to the people of Kentucky, thinks Governor Sampson, who believes that more Kentucky materials may be used in road-building at a saving of freight and that some prison labor may be employed in quarries, gravel pits, and asphalt mines. He urges the condemnation for public use of the toll bridges of the state, which, in some instances, collect in a single year the total cost of construction. To replace certain toll ferries he proposes toll bridges financed with

mortgage bonds and managed by state officials. Compulsory liability insurance for automobile drivers is commended by Governor Moore (N. J.). Governor Bilbo (Miss.) approves the issue of bonds to the amount of \$53,500,000 over a period of four years to build a primary system of hard-surfaced roads and a secondary system of graveled highways. An automobile tag and license should be good for the life of the car, in his opinion, and the gasoline and oil sold in the state should be thoroughly inspected. That the state highway department should offer expert engineering advice to county authorities, that the state road purchasing department should likewise offer its facilities, that a unified county road law be adopted by the state, and that a half-cent be added to the gas tax, are parts of Governor Byrd's (Va.) plans for road improvement. Governor Fuller (Mass.) advises the investigation of fire insurance rates, and also of the rates for workmen's compensation insurance. Governor Bilbo (Miss.) vigorously demands a state-owned plant primarily for printing school text-books, though he just as positively opposes free text-books: "The white people of the state pay most of the taxes, and they do not propose to go to the enormous expense of providing free text-books for the negro children, who are in the vast majority." He also advocates the appropriation of funds to equip a plant for the production of vitrified paving brick for road-building.

*Agriculture and Welfare.* Additional authority for the bureau of markets in order that it may protect the grades and standards of agricultural products, as well as efficient inspection of food products and especially milk, are considered desirable by Governor Pothier (R. I.); while Governor Bilbo urges a bureau of markets adequately financed to organize all the farmers of Mississippi into one great body. The status of agriculture alarms Governor Richards (S. C.), who declares that cotton cannot be grown profitably under boll weevil conditions by the old methods. Purchasers of land for farming purposes should be exempted from taxes for a period of five years, he believes, in the same manner as manufacturing enterprises were exempted by the last session of the legislature.

Comprehensive state supervision of dams, ten of which gave way during the recent floods in Rhode Island, and a study of water courses, of the capacities of ponds and streams, and of the spillway facilities of dams, were suggested to the lawmakers by Governor Pothier, along with legislation for the enforcement of orders for repairs and alterations where the public safety demands them. Governor Bilbo (Miss.) would

authorize counties and cities to contribute to the support of widowed mothers, and Governor Smith (N. Y.) would have the state match, with its funds, the local appropriations for child welfare. The former desires a commission of juvenile research to maintain a clinical laboratory, probably at the state capital, and assist the courts, schools, children's institutions, and citizens in the proper handling of defective and delinquent children.

*Miscellaneous Subjects.* Again Governor Moore recommends the repeal of the New Jersey prohibition enforcement act and the submission of the subject to the people at a "real referendum." Governor Smith holds that the mistake of the legislature of 1919 in failing to submit to popular vote the question of ratifying the Eighteenth Amendment is a considerable factor in the unrest and dissatisfaction apparent in large portions of the state, and a prime cause of disrespect for law. But he declares that there devolves upon the state the sacred duty of sustaining the Eighteenth Amendment and the Volstead law: "they are as much a part of the law of this state as our own statutes and our own constitution." He will remove from office, upon proper proof, any official charged with laxity in enforcing the law. "People of any locality get the degree of law enforcement upon which they insist and for which they are willing to pay."

Governor Sampson declares the subsidized lobbies around the capitol during legislative sessions a menace to free government, with no excuse for existence except selfishness and greed—"the darkest blot upon the fair name of Kentucky." Governor Bilbo (Miss.) warns the lawmakers against the agents of the "American Book Trust" and other predatory interests.

"We cannot have our industries operated so that the employees work fewer hours and earn more money and the employers pay more taxes, and at the same time have the product compete in price with those of other states where the women and children work longer hours, where wages are low, and where taxes are much less," argues Governor Fuller (Mass.) in presenting a fundamental reason for economy.

Mention was made in the messages of the following reports: commission on taxation, in Massachusetts; commission on civil and criminal procedure, in Florida; investigating and budget commission in Georgia; survey of local civil service commissions by the state civil service commission, in New York; and commission to survey the educational system, in Virginia. Governor Byrd, of the last-mentioned state, seems to have made use of no fewer than eleven commissions,



whose members he commends for their unselfish service to the state.

*Extraordinary Sessions.* Governor Hunt called a special session of the Arizona legislature in August, 1927, mainly to provide money for the highway department and some twenty other agencies of state government. Nineteen items of legislation were mentioned in the call, all of little interest outside the state. An increase in the salaries of state officers was requested, inasmuch as no change has been made since the admission of Arizona to statehood.

The intention of a circuit court judge to enjoin the operation of the existing direct primary law because of its alleged unconstitutionality induced Governor Small to call the Illinois legislators into special session January 10, 1928. Aside from election matters, little was brought to their attention. The courts seem, in the end, to have saved the primary and rendered the session relatively unprofitable.

For the single purpose of making provision for the repair of the flood damage to roads and bridges, the New Hampshire lawmakers met in extra session in November, 1927. Governor Spaulding recommended that the state assume practically all the burden of the disaster and finance the necessary expenditure by short-time notes later to be taken up by bonds and paid off by means of an increase in the gasoline tax. All these recommendations were adopted at a single day's session.

In May, 1927, a bonding company announced to the Nevada state board of examiners its withdrawal from the bond of the state treasurer. Developments revealed a conspiracy among several officials to defraud the state. The status of the finances thus brought about was one of the reasons for holding the special session which Governor Balzar called for January, 1928. The offenders are now serving terms in the state penitentiary.

A fact-finding committee appointed by the senate of the North Dakota legislature to investigate the operation of the state mill and elevator made several reports. Declaring that these reports were published for no other purpose than to injure the plant and to afford a basis for criticism of his administration, Governor Sorlie chose to lay the facts before the legislature in special session in January, rather than to engage in a newspaper controversy. His message is a concrete consideration of the problems to be met by this state industry. He finds "an impossible situation" in the monthly reports of the mill and elevator auditor and those of the auditor employed by the industrial commission, besides "three separate and complete semi-annual audits." Unfortunately, these reports are conflicting. The governor

says: "There should be no secrecy in public business, but I urgently recommend that you enact legislation that will give these public enterprises at least a measure of the same protection that private capital enjoys. . . . To make an auditor's battle a part of our economic and political issues is unsound and altogether ridiculous." He believes that \$160,000 can now be paid out of the earnings of the mill toward retirement of the construction bonds. He repeats testimony presented to the Interstate Commerce Commission to the effect that the people of the state are paying \$50,000 freight charges annually on dockage of \$500,000 food value which goes out of the state. He proposes the erection of another terminal elevator. The profit of the bank of North Dakota for the last year is reported as sixteen per cent. A Federal Trade Commission decision is cited for proof that the Minneapolis chamber of commerce in one year collected more than \$57,000 for "educational purposes," that all the propaganda published against the Equity Coöperative Exchange (farmers' agency) was false, that the chamber would order a thousand copies of Fargo papers on condition that they print certain articles furnished by it, and that the chamber succeeded in having its own specially appointed and paid auditing firm selected to audit the books of the Equity for the purpose of discrediting it and securing its dissolution.

Governor Bulow of South Dakota found it necessary to call a special session in June, 1927, because the regular session had passed no appropriation measure. Apparently the governor had vetoed a bill appropriating an amount which he regarded as in excess of the expected income of the state. He frankly and positively informed the lawmakers that the amount of appropriations must be kept within the revenue if they desired his approval, and that how this could be done was a problem for the legislature to work out. Incidentally, the governor proposed the repeal of the money and credits tax, as of doubtful value under a court decision, and suggested that the proceeds of the cigarette tax be permanently appropriated for construction and maintenance of educational institution buildings.

To a special session of the Wisconsin legislature in January, 1928, Governor Zimmerman stated that the totals of appropriations then on the books exceeded the cash balances and expected receipts for the biennium by over seven and one-half million dollars. He, also, had vetoed appropriation bills at the regular session. He reminded the legislature that such measures should be considered before the closing days of the session. The normal schools and the state institutions

under the board of control especially demand money. He urged the financing by some system of taxation of a continuing building program for the care of dependents, defectives, and delinquents, in which, he declared, twenty thousand families of the state are directly interested.

Upon petition of a majority of the legislators of Iowa, Governor Hammill called a special session in March, 1928, to consider the submission to popular vote of a \$100,000,000 bond issue for financing state highway construction, in lieu of a multitude of county bond issues. The state issue is intended to retire \$60,000,000 outstanding in county bonds and to be repaid wholly from the proceeds of motor license fees and the gasoline tax.

An extra session in Virginia, in March, 1927, was called mainly to act upon the reports of a commission to suggest amendments to the constitution and a citizens' commission to recommend simplifications in state governmental organization. The latter based its suggestions on a survey conducted by the New York Bureau of Municipal Research. Governor Byrd advised that popular approval be required for local bond issues and that the governor be prohibited from offering a recess appointment to any one who has failed of legislative confirmation. He proposed, in addition, the repeal of a law which permits utilities to put into effect increased rates while a request for such increase is pending before the state corporation commission and the courts, the establishment of apple grades by the state department of agriculture, and a survey of the entire educational system of the state as a basis for legislation.

## AMERICAN GOVERNMENT AND POLITICS

FIRST SESSION OF THE SEVENTIETH CONGRESS

December 5, 1927, to May 29, 1928<sup>1</sup>

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Long sessions in presidential years are short ones in the sense that the conventions dictate earlier and more definite limits than even Washington weather invites. Moving to such an end, the recent session could not escape the season's contagion. Yet presidential politics hardly set the tone of the session. Its work had unusual inherent interest. The array of questions before it, mingling economic and technical elements, was indicative of the trend of problems of public policy. It presented the paradox of all Congresses, of course: partisanship in building the machine; eclectic voting or bipartisan combinations in the actual passing of bills.

*Membership.* The Republican majority in the House had been cut by the 1926 elections and by a party shift in one of five by-elections<sup>2</sup> from 61 to 40—a margin safe enough for purposes of organization,<sup>3</sup>

<sup>1</sup> For notes on the 69th Congress, see this *Review*, vol. 20, p. 604, and vol. 21, p. 297. For notes on earlier Congresses, prepared by Lindsay Rogers, see vol. 13, p. 251; 14, pp. 74, 659; 15, p. 366; 16, p. 41; 18, p. 79; 19, p. 761.

<sup>2</sup> Five deaths occurred before the opening of the session, but a change of party resulted only in the first district of Colorado, where the Democrats gained a seat on what was said to have been the wet issue. At the beginning of Congress the groups were: Republican, 237; Democratic, 195; Farmer Labor, 2; Socialist, 1. Three Republicans—M. B. Madden of Illinois, chairman of appropriations, T. S. Butler of Pennsylvania, chairman of naval affairs, and T. C. Sweet of New York—and one Democrat, J. A. Gallivan of Massachusetts, died during the session. Wood of Indiana and Britten of Illinois succeeded to the important chairmanships. W. R. Green of Iowa resigned to go on the Court of Claims; Hawley of Oregon took his place as chairman of ways and means.

<sup>3</sup> The treatment of James M. Beck is in point. He was chosen in a special election in October to fill Vare's seat on the resignation of the congressman-elect, Vare's own kinsman. At the opening of Congress, the Democratic floor leader advanced the objection that Beck had not been a resident of Pennsylvania, and sought to have the oath withheld pending investigation. His motion was rejected, however, 158 to 244. After hearings, a House committee on elections decided by a vote of 6 (5 Rep., 1 Dem.) to 3 (1 Rep., 2 Dem.) that Beck was legally qualified. Tendered on March 17, the report (H. Rept. 975) remained unacted upon at the end of the session. Mr. Beck was only slightly active in House affairs.

even apart from the relaxed mood and leaderless condition of insurgency in the lower chamber.

In the Senate, however, the Republican lead had been reduced to a hair. Even if Smith of Illinois and Vare of Pennsylvania were counted, those called Republicans numbered only 48, against 47 Democrats and a Farmer Labor member. Deaths chanced to net the Republicans a seat, so that at the session's close, although lacking Smith and Vare, they still had a plurality of one.<sup>4</sup> Two empty seats in the meantime were evidence of the weakness of the regular Senate Republicans when deprived of the aid of House amendments and House conferees. At oath-taking time on December 5 Smith and Vare stood aside when Senator Norris interposed objections. The two cases were handled separately, and were indeed distinguishable. The objections to Smith concerned the amounts and sources of an admitted expenditure of \$458,782 in the Illinois primary of 1926; the case of Vare involved, in addition, charges of fraud and a pending contest between him and William B. Wilson, his Democratic opponent in the general election. In both cases it was assumed that an investigation would take place; but the defenders of Smith and Vare sought to have them seated in the meantime, or, failing that, to have the matter referred to the regular committee on privileges and elections instead of the special committee on campaign expenses headed by Senator Reed of Missouri.<sup>5</sup>

The attack on Smith was opened first. On December 7, after two days, debate, the resolution offered by Senator Norris (S. Res. 1, modified slightly to allow Smith the privilege of the floor in order to defend himself) prevailed by a vote of 53 (16 Republicans, 36 Democrats, 1 Farmer Labor) to 28 (24 Republicans and 4 Democrats). Reporting on January 17 after hearings, the special committee recommended a resolution that Smith was not entitled to a seat because the acceptance and expenditure of the money involved in his candidacy were "contrary to sound public policy, harmful to the dignity and

<sup>4</sup> A. A. Jones of New Mexico and W. N. Ferris of Michigan, Democrats, were replaced by A. B. Cutting and A. H. Vanderberg, Republicans; F. B. Willis of Ohio, Republican, by C. Locher, Democrat—all by appointment.

<sup>5</sup> Constituted originally in the 69th Congress under S. Res. 195, the attempt expressly to empower it to act between Congresses had provoked the filibustering duel between the two Reeds in March, 1927. Despite opposition from the chairman of the Senate committee on audit and control, it had sought to act in the interim. Its existence was confirmed in the 70th Congress by S. Res. 10, adopted on December 12, by 58 (16 Rep., 41 Dem., 1 Farmer Labor) to 21 (20 Rep., 1 Dem.)

honor of the Senate, dangerous to the perpetuity of free government. . . .” This was adopted on January 19 by 61 (21 Republicans, 39 Democrats, 1 Farmer Labor) to 23 (21 Republicans, 2 Democrats).<sup>6</sup> The parallel proceeding against Vare went swiftly through the first phase but thereafter dragged a different, inconclusive course. On December 9 the case was sent to the special committee by a vote of 56 (17 Republicans, 38 Democrats, 1 Farmer Labor) to 30 (25 Republicans, 5 Democrats). When the session ended, both the special committee and the regular committee on privileges and elections (having the case of Wilson against Vare before it)<sup>7</sup> were understood to be struggling with the legal and practical difficulties of a recount.<sup>8</sup>

*Organization.* The House organized on December 5 by reelecting Nicholas Longworth over Finis J. Garrett by the strictly party vote of 227 to 187, with the two Farmer Labor members and the single Socialist recording themselves “present.” The Speaker gave a genial wave to Wisconsin as he took the chair: “I am particularly pleased to have received the votes of gentlemen who have been seated on my party’s side of the aisle for the past four years, but who on two previous occasions have preferred to vote for a candidate for Speaker other than the one proposed by the Republican majority. I welcome your return to the Republican party, where you rightfully belong.” The rules of the previous Congress were adopted without controversy and without

<sup>6</sup> S. Res. 112, p. 1781. (The reference, as always when pages are given without further citation, is to the *Congressional Record*, vol. 69). A word about the aftermath must suffice. Official Illinois had intervened in the hearings to the extent of sending its attorney general and a legislative delegation. On February 9, 1928, Governor Small named Smith to fill the vacancy and ordered a senatorial primary on April 10. In the débacle of the Small-Thompson-Crowe faction, Smith lost the nomination to Otis F. Glenn by 656,158 to 525,847.

<sup>7</sup> S. Res. 68, agreed to without debate on December 17, p. 781, cited the fact that the Wilson-Vare contest had been referred to the committee on privileges and elections. On March 4, 1927, it renewed this reference. Noting the investigation that was being conducted by the special committee, the resolution authorized each committee to consider evidence taken by the other.

<sup>8</sup> On May 28, in the case of James A. Reed, et. al., Petitioners, v. the County Commissioners of Delaware County (72 L. Ed. 462), the United States Supreme Court held that the special committee, under the authority granted to it by the Senate, did not have the right to invoke the power of the judicial department. As a matter of fact, the documents in question had already been secured; the point was carried up because of its interest in law. In another connection, the Senate on March 24 ordered the arrest of T. W. Cunningham as a recusant witness (S. Res. 179, p. 5491). The matter was later certified to the U. S. district attorney (p. 5565).

change, save for the abolition of sixteen standing committees described as "deadwood used simply to furnish assignments to members."<sup>9</sup> The formal election of the 46 remaining committees took place without untoward incident on December 6 and 12.<sup>10</sup>

The organization of the Senate was accomplished without the deadlocks that marked the 68th Congress, and even without evident friction, but not without risks and uncertainty. The 33 standing committees, increased somewhat in size as a concession to the progressive faction and to the minority, were elected on December 13. Pat Harrison could not resist a gibe: "There is nothing in the suggestion that there are certain senators on the other side who must see what committee assignments they receive before they vote on the organization of the Senate, is there?" (p. 479). Certainly it was not until December 15 that the organization was completed by the reelection of George H. Moses as president *pro-tem*, by a vote of 42 to 39. Among the newly chosen chairmen, furthermore, were Nye, of public lands and surveys, Frazier, of Indian affairs, Norbeck, of banking and currency, and Howell, of claims.<sup>11</sup> The circumstances were hardly less arresting because these selections were in accordance with seni-

<sup>9</sup> P. 11. The committees thus abolished were: alcoholic liquor traffic, railways and canals, woman suffrage, industrial arts and expositions, mileage, and eleven committees on expenditures. Altogether, 129 assignments were involved, although 17 of these had not been filled in the 69th Congress. As an offset, a committee on expenditures of 21 was created, and the membership of 13 important committees was increased—from 21 to 23 in the cases of commerce and judiciary and from 15 to 21 in the other instances. In this way 86 new assignments were made possible. Of the members affected, furthermore, 54 had four or more committee assignments in the 69th Congress.

<sup>10</sup> Action on December 6 was confined to the committees on ways and means and appropriations. In connection with the latter, the Democratic spokesman, Garner, offered the names of only the hold-over minority members, for (he explained) "under our organization on this side of the House we must report to the caucus for the confirmation of the action taken and we have not yet had that caucus" (p. 130). A colloquy between Mr. Tilson and Mr. Connally brought out that the Republican committee on committees is not required to report formally to a caucus (p. 485). On December 12 the complete lists were offered on separate motions of the two floor leaders.

<sup>11</sup> Norris was already chairman of judiciary; Couzens, of education and labor; McNary, of agriculture; Johnson, of immigration; and Borah, of foreign affairs. Perhaps the only committee assuredly under strictly regular control was privileges and elections, and even it had been forced to share its power with the special committee.

ority, including Nye's, since the four Republicans who outranked him preferred other chairmanships.

Something like a bargain there was, and the manner and mood of its making are clues to some of the dynamics of the session. Even if the Progressive Republicans had offered it, the Democrats were not seeking the responsibility of factitious control on the eve of a campaign. The very conditions in party government that give power to such a group as the Senate Progressives limit its exercise. The group could hardly threaten, but it was feared, and there was room for cautious pressure and a kind of understanding. Its modest strategy was embodied in an interchange of letters between Senator Curtis, the majority leader, and Senator LaFollette and four associates.<sup>12</sup> On December 1 the group wrote: "The result of the 1926 elections has placed upon us a responsibility to our constituents which we must discharge. We are not so vitally concerned with individual preferment of senators upon committees. The more important question with us is that certain legislation which we think is of paramount interest to the people shall not be pigeonholed. . . . To that end we request definite assurance from the Republican majority that there shall be a final vote in the Senate before the adjournment of the first session of the Seventieth Congress upon the following measures. . . ." The three proposals listed were, first, farm relief legislation on the basis of the McNary-Haugen bill; second, a resolution for the investigation of policy in Central and South America; and third, a bill to regulate the issuance of injunctions. Senator Curtis' acknowledgment on December 3 declared his personal belief that votes were due on these matters; the personnel of the committee chairmen, he thought, guaranteed that the bills would not be pigeonholed. The Progressives countered by pressing him to consult with all the Republican members of the committees involved. Mr. Curtis said that the correspondence would be brought before the Republican conference. When this was done on December 6, the majority leader was authorized to confer further with the Progressives. The upshot was a statement released to the press by them: "In our meeting with Senator Curtis he assured us that 'a majority of the Republican conference took the position that

<sup>12</sup> The others were Blaine of Wisconsin, Frazier and Nye of North Dakota, Republicans, and Shipstead of Minnesota, Farmer Labor. Senator Norris did not join in the correspondence; indeed the writer gathers that he thought it a mistake. On December 13, in seeking to reply to Harrison's innuendo, LaFollette inserted the whole correspondence in the *Record*, pp. 541-2.



there should be no unnecessary delay in securing a vote upon the three measures during this session of Congress.' Having obtained definite assurance from Senator Curtis and the Republican conference, we shall assist in organizing the Senate, reserving our right to pursue an independent course of action upon questions which may arise during the session." Two matters from their list did indeed reach the floor, and the anti-injunction bill was held back only by their inability to find time to perfect it.<sup>13</sup>

The caucuses, or "conferences," it is needless to observe, hardly function after the opening of Congress. None seems to have been held in the House, and none on the Republican side in the Senate, after the preparatory authorization and perfunctory ratification of the party organs that are summarized in an accompanying table (below, p. 656). The Democratic senators, however, met at least three times—in connection with flood control and the merchant marine (though in both instances the non-partisan character of the legislation was emphasized), and again in connection with the altercation on January 18 between Senator Heflin and the floor leader.<sup>14</sup> The caution with which the conference pronounced on this fantastic situation need not have caused surprise. Party groups are perhaps cowardly, but they are experienced enough to know the nature of their cohesion and the narrow limits of direct discipline.

*Procedure.* Control is far from absolute even in the relatively numerous, regimented House. The writer recalls the frank, off-hand

<sup>13</sup> Below, pp. 665, 682. The statement in the text construes the vote on the proposed rider regarding Nicaragua on the naval appropriation bill as meeting the second item.

<sup>14</sup> Senator Robinson remonstrated in the course of one of Heflin's anti-Catholic tirades, leading Heflin to retort: "So far as I am concerned, I am going to object to the Senator remaining on that committee any longer" (referring to the special committee to investigate the so-called Hearst documents purporting to show attempts by Mexican authorities to bribe certain senators). He added that "The Senator from Arkansas cannot remain leader of the Democrats and fight the Roman Catholics' battle every time the issue is raised in this body without some expression from a constitutional Democrat" (p. 1721). Robinson promised to call a conference on the following day and challenged Heflin to move the selection of another leader. By a vote of 35 to 1 (Trammell of Florida), the conference contented itself with a resolution expressing "its confidence in the leadership of Senator Robinson and his services on the special committee . . . ." Many people regretted that the bare facts gave Heflin (who did not attend) a chance to say: "The conference refused to pass a line that smacks of censure of me or of my position" (p. 1765).

## PARTY ORGANIZATION IN THE SEVENTIETH CONGRESS, FIRST SESSION

(Individuals indicated with an asterisk held similar positions in Sixty-ninth Congress)

SENATE<sup>15</sup>*Republican*

\*Moses, G. H. (N. H.) Pres. *Pro-Tem*  
 \*Curtis, C. (Kan.) Floor Leader and Chairman of Rules  
 \*Jones, W. L. (Wash.) Whip  
     Steering Committee  
     (Committee on Order of Business of  
     Republican Conference)  
     Sackett, F. M. (Ky.)  
     Keyes, H. W. (N. H.)  
     \*Norbeck, P. (S. D.)  
     Shortridge, S. M. (Cal.)  
     Howell, R. M. (Nebr.)  
     Robinson, A. R. (Ind.)  
     Waterman, C. W. (Colo.)

*Democratic*

\*Robinson, J. T. (Ark.) Floor Leader  
 \*Walsh, T. J. (Mont.) Vice Chairman of  
     Conference of Minority  
 \*Gerry, P. G. (R. I.) Whip  
     Steering Committee  
     \*Robinson, J. T. (Ark.)  
     \*Walsh, T. J. (Mont.)  
     \*Pittman, K. (Nev.)  
     \*Swanson, C. A. (Va.)  
     \*Harrison, P. (Miss.)  
     \*Simmons, F. M. (N. C.)  
     \*Sheppard, M. (Tex.)  
     \*Kendrick, J. B. (Wyo.)  
     \*Caraway, T. H. (Ark.)  
     \*Broussard, E. S. (La.)  
     Fletcher, D. U. (Fla.)

HOUSE<sup>16</sup>

\*Longworth, N. (Ohio) Speaker  
 \*Tilson, J. Q. (Conn.) Floor Leader  
 \*Vestal, A. H. (Ind.) Whip  
 \*Snell, B. (N. Y.) Chairman of Rules

\*Garrett, F. J. (Tenn.) Floor Leader  
 \*Oldfield, W. A. (Ark.) Whip  
 \*Garner, J. N. (Tex.) Ranking minority  
     member of Ways and Means and  
     leader of group which acts as a com-  
     mittee on committees

    Steering Committee  
     \*Tilson, J. Q. (Conn.)  
     \*Darrow, G. P. (Pa.)  
     \*Dennison, E. E. (Ill.)  
     \*Sinnott, N. J. (Ore.)  
     \*Treadway, A. T. (Mass.)  
     \*Newton, W. H. (Minn.)  
     Hoch, H. (Kan.)  
     Lehlbach, F. R. (N. J.)  
     Demsey, S. W. (N. Y.)  
     Johnson, R. C. (S. D.)

No party instrumentality cor-  
 responding to the steering  
 committee exists.

<sup>15</sup> *Senate Methods.* (a) Republican. In addition, a committee on committees of nine members, appointed by the Floor Leader, exists. (b) Democratic. The preliminary organization caucus was held on March 5, 1927. It authorized the Floor Leader to choose the steering committee, which worked out committee assignments. The three ranking minority members of each standing committee were made committees of the minority conference.

<sup>16</sup> *House Methods.* (a) Republican. The preliminary caucus on organization was held on February 21, 1927, consisting of the members-elect. It authorized a committee on committees consisting, as usual, of one member from each state having Republican representation, selected by the Republican members of the delegation and having proportional voting power. The steering committee was chosen by this body. (b) Democratic. The preliminary caucus was held on March 1, 1917. In addition to the leaders, it chose the Democratic members of ways and means and authorized them, as usual, to act as a committee on committees. The assignments were ratified at a second caucus on December 8.

comment of one of the most powerful leaders on the work of the session that had just closed. Yes, a good session, but not the best—he named some of the outstanding enactments; they were not good bills. It was clear that he had little stomach for them. Yet they had moved through the congestion, aided usually by special rules which could hardly be withheld.

The number of special rules agreed to and used in the consideration of bills was 17, compared with 16 and 19 in the long sessions of the 69th and 68th Congresses, respectively. Six others were reported, of which two were replaced, two laid on the table, and two never brought to a vote. One of the latter (H. Res. 222) was for the consideration of a civil retirement bill (S. 1727). Bertrand Snell, chairman of rules, was unabashed in his admission of responsibility. "Why has he not brought forward the rule which applies to the retirement bill . . . ?" asked a member. "Because I have not seen fit to," said Mr. Snell (p. 10731). The metaphor is not his, but it is evident that Mr. Snell conceives himself bound to the mast with deafened ears, duty-sworn and imperious. The House (he will explain) is often glad to be saved from itself in the face of pressure of certain kinds. With the exception of the revenue bill and the measure for Muscle Shoals (S. Jt. Res. 46), the major bills of the session moved under special rules;<sup>17</sup> so too did one that changed the rank of the President's physician.

Consequences that indirectly promise badly for House procedure may follow the defeat of a bill to direct an automatic reapportionment (the first since 1911) following the 1930 census, on the basis of a continued membership of 435. The proposal (H. R. 11725) was recommitted on May 18 by a vote of 186 to 164 (p. 9447). It had been hoped that the *impasse* due to the dread of lost seats or of a larger House could be broken by making the legislation anticipatory; and the attempt may be renewed in the second session. The comment of the veteran Burton of Ohio is interesting: "I say here frankly and bluntly that I would rather fail to comply with the constitutional provision than see the size of the House increased. . . . I cannot describe to

<sup>17</sup> Regarding the extent to which the business of the House is done by unanimous consent, see below, p. 681. It may be added, from a different angle, that no serious attempt was made to use the discharge rule adopted December 7, 1925. Johnson of South Dakota waved a petition blank in connection with a bill for war-time conscription of wealth, but faded when the chairman remarked that he would be glad to have hearings if only Mr. Johnson would request them (April 5, p. 6212).

you too strongly the difference between the transaction of business in this House when I first became a member of it, when there were only 325 members, as now compared with 435" (p. 9296).

The Senate never came to *clôture*, although there was talk of it in several connections,<sup>18</sup> and ample provocation in the filibustering led by Ashurst of Arizona against Johnson's bill for the high dam at Boulder Canyon (S. 728). "My physical energy is superb," Ashurst gave the Senate to understand in April; "let no one doubt that my voice, my heart, my knees or backbone will ever play traitor to me in this fight. But if, perchance, I stumble in this fight to the death, my worthy colleague will pick me up" (p. 7701). A month later, during an all-night session that ran to thirty hours, he had strength to range as far as "the Petrified Forest, whose trees lived their green milleniums and put on immortality in Triassic time, 7,000,000 years ago." Boulder Dam was on the preferred list of the steering committee, but Johnson had stood aside for the revenue bill. Instead of a few days, that measure took two weeks; and it is hard to resist suspecting concealed filibustering aimed at more than Boulder Dam. Johnson had votes for passage, not for *clôture*; and in general he is probably unsympathetic to the latter anyway. At any rate, he ignored taunting references to a petition that Ashurst supposed he had in his vest pocket (p. 9583). The House meanwhile passed the companion bill under a special rule; the vote was 219 to 132 (H. R. 5773, May 25, p. 10237). Johnson was able to fight off motions that would have displaced his bill,<sup>19</sup> but (despite aid from the Vice-President in resolving negatively a tie vote on a motion to agree with the House on adjourning May 29) he failed by a vote of 39 (17 Republicans, 21 Democrats, 1 Farmer Labor) to 41 to have the date postponed to June 5. The upshot was a draw—perhaps a sporting disposition after all, in view of the fact that both Johnson and Ashurst have campaigns on their

<sup>18</sup> On May 26, for example, Reed of Pennsylvania announced that he had in his pocket a petition bearing more than sufficient names for use on a bill regarding promotions in the air corps (H. R. 12814, p. 10345). It was not used, in view of the position of Boulder Dam as unfinished business.

<sup>19</sup> On May 26, for example, motions to take up the bills for army promotions (H. R. 12814) and naval construction (H. R. 11526) were defeated by votes of 16 to 51 and 22 to 43, respectively (p. 10361).

hands.<sup>20</sup> Boulder Dam survives as the unfinished business of the Senate at the opening of the short session.<sup>21</sup>

A filibuster against the conference report on Muscle Shoals (S. Jt. Res. 46, below p. 668) was broken by determined and skillful management. Here also a state's sectional pique did valiant service for those who disliked the underlying feature of government operation itself. Tennessee led the obstruction. After a siege of twenty hours in an all-night session, the conference report was agreed to on May 25 (p. 10167) by 43 (16 Republicans, 26 Democrats, 1 Farmer Labor) to 34 (22 Republicans, 12 Democrats). This outcome was a tribute to the parliamentary master who years ago found the crack in Cannon's armor. Senator Norris' strategy lay essentially in placing and keeping the conference report on Muscle Shoals ahead of those on the revenue bill, the second deficiency bill, and other measures. The pressure thus created helped to keep the Senate in session and to force a vote.

These filibusters, it should be remembered, occurred in a session that faced a virtually fixed time of adjournment, due to the conventions. So far as the permanent evil of alternating short sessions goes, reform has been delayed by the defeat of the so-called "lame duck amendment" (S. Jt. Res. 47). It passed the Senate again on January 4 by 67 to 6 (4 Republicans, 2 Democrats), and having been favorably reported in the House—the fourth time—was at last brought to a vote there under a special rule. The House committee inserted the provision, however, that the sessions in even-numbered years should terminate on May 4. The writer guesses that the rules committee would not have aided it without this change, and may indeed have

<sup>20</sup> S. Jt. Res. 164, approved May 29, Public Resolution No. 65, was whisked through at the last minute; it provides for a rechecking of the Boulder Dam site before the next session by a board of experts to be appointed by the President. This group began work in July.

<sup>21</sup> Color was furnished at the close when Bruce of Maryland, Democrat, sought to speak against Johnson's motion (made at the urging of Robinson, Democratic floor leader) that Boulder Dam be made a special order for the opening day. "Ayes and noes, ayes and noes," Robinson bellowed, waving his arms to a shouting chorus. The roll had indeed started (though the *Record* is not revealing on this point) when LaFollette intervened with an appeal to the rules of the Senate. Such alertness and such parliamentary sense deepen respect for the youngest of senators even among his political opponents. At this moment, amid confusion, the Senate was taken into executive session to cool, and the show was spoiled. Heflin furnished pathos during the final hour, which King filled with Turkish wrongs to Armenia; he moved about with what was evidently a speech in his hand, suffering visibly.

dictated its terms. The change was in line with the deep, explicable distrust of easier methods of legislation felt by the elements that man the House machine.<sup>22</sup> In its revised form, the proposed amendment certainly offered no remedy for the opportunity which short sessions of fixed duration give to filibustering. The new language was finally stricken out in committee of the whole by 151 to 96. Then, unfortunately (March 9), the resolution fell short of the necessary two-thirds, receiving 209 (89 Republicans, 118 Democrats, 2 Farmer Labor) to 157 (102 Republicans, 55 Democrats) (p. 4593).

*The President and Congress.* Seldom has the bifurcation of our politics been more evident. On the positive side, interest attaches to tax reduction, flood relief, and naval construction as tests of executive influence in legislation. On the other side, interest does not lie in the number of vetoes, although seventeen is above the average, nor in the fact that six attempts were made—three of them successfully—to override the President's objections.<sup>23</sup> The interest runs deeper. What

<sup>22</sup> A further factor, no doubt, was their belief that it may sometimes be inconvenient, even embarrassing, to have Congress in session too near to election time.

<sup>23</sup> Altogether, 13 bills were returned with veto messages. Three of these were overridden. Two of the bills in question affected salaries, etc., in the postal service and together, the President argued, meant an added cost of \$9,321,000 annually. Thus H. R. 5681 created a differential of 10 per cent for night work by postal employees. The vote to pass it over the veto in the House was 319 (161 Republicans, 155 Democrats, 1 Socialist, 1 Farmer Labor) to 42 (39 Republicans, 3 Democrats); in the Senate, 70 to 9 (all the latter being Republicans). H. R. 7900 gave fourth-class postmasters an allowance for fuel, light, and equipment. The vote to pass it over the veto was 319 (161 Republicans, 155 Democrats, 1 Socialist, 1 Farmer Labor) to 46 (41 Republicans, 5 Democrats); and in the Senate 63 to 17 (14 Republicans, 3 Democrats). The third successful attempt involved S. 777, for the retirement of disabled emergency officers, assimilating their treatment to that of regulars. The overriding vote in the Senate was 66 (24 Republicans, 41 Democrats, 1 Farmer Labor) to 14 (13 Republicans, 1 Democrat); in the House, 245 to 101. In addition, one other attempt to override a veto passed one house. This concerned S. 3674, for aid to the amount of \$3,500,000 a year for three years in the construction of roads on unappropriated unreserved lands and non-taxable Indian lands, etc. Having passed the Senate on May 24 by 57 (19 Republicans, 37 Democrats, 1 Farmer Labor) to 22 (17 Republicans, 5 Democrats), the bill failed in the House on the next day by 161 to 182. Two other attempts were brought unsuccessfully to a vote in one house. One of these was a minor bill, S. 750, to commission band masters; it missed two-thirds by 44 (11 Republicans, 32 Democrats, 1 Farmer Labor) to 32 (25 Republicans, 7 Democrats). The other attempt concerned the farm surplus bill, S. 3555; it failed by 50 to 31 (below, p. 665). Of the other bills that

is this representative process that rolls up such majorities as the farm surplus bill received, only to strike it down by a veto prickly with aspersions? What is this responsible government in which a plan for Muscle Shoals, having won its way through Congress after eight years of discussion, is swallowed in the lethal obmutescence of the White House?

The President's victory in his effort to keep down the total of tax reduction is misleading as a test of strength unless considered in the light of the variant viewpoints on taxation held by the Democrats and Progressive Republicans. Their divergence helped to make it possible to hold the cut to a little less than \$225,000,000, although in the choice of forms of taxation within the total the recommendations of the Administration were repudiated in important particulars.<sup>24</sup>

received messaged vetoes, the most important was H. R. 11026, for the co-ordination of public health activities. Two others concerned the War Department—H. R. 7752 (reserve supplies) and 8550 (small arms practice); two more dealt with Indian tribes (H. R. 167 and S. 1480); two were private (H. R. 4664 and 10139). For four pocket vetoes, see below, p. 668.

<sup>24</sup> Hearings on H. R. 1 began October 31, 1927, when Secretary Mellon recommended: (1) reducing the corporation tax from 13½ to 12 per cent; (2) permitting very small corporations the option of being taxed as partnerships; (3) readjusting surtax rates in the brackets between \$18,000 and \$70,000; and (4) repealing the estates tax. He opposed changes in the automobile, theater admission, or stamp taxes. The total reduction, he said, could not safely exceed \$225,000,000. The repudiation of the Treasury plan began even in the committee on ways and means, which decided to recommend a total reduction of \$250,000. It decided against the repeal of the estates tax, 17 to 6, and against the surtax reduction in the middle brackets, 21 to 2. The Democrats found allies enough, when the bill got on the floor, to insert and sustain amendments providing for the graduated corporation tax (136 to 132; 212 to 182); dropping consolidated returns by affiliated companies (158 to 153; 219 to 187); and eliminating the automobile sales tax instead of halving it as the committee suggested (166 to 142; 245 to 151). With the Republican leaders gathered in a huddle like a disconcerted backfield, the bill passed the House on December 15 by 365 to 24 (21 Republicans, 1 Democrat, 1 Farmer Labor, 1 Socialist) (p. 718). It carried a total reduction estimated at \$289,000,000. Secretary Mellon asked the Senate to defer consideration until the income tax returns were received in March. The Senate committee agreed to this by 11 to 9—a party vote. On April 6 the Secretary renewed his proposals and urged a limit of \$201,115,000. The Democrats took issue; the committee reported by a strictly party vote, apart from the estates tax, on which the committee reversed itself and decided (after a tripartite conference in which the White House was involved) not to recommend repeal. In the Senate the committee's draft was changed by the adoption of an amendment for a graduated corporation tax by 40 (2 Republicans, 38

The Democrats tended to look at the problem in terms of tax reduction; they talked of taking off \$300,000,000 or \$400,000,000. They seemed to share what Mr. Tilson called the "atmosphere of protest fomented by the National Chamber of Commerce." Their preference for a lower corporate income tax rate, their proposal for a graduated corporate income tax, and their concern for surtax brackets below \$20,000 were quite typical. As for indebtedness, Senator Simmons, ranking member of the Senate committee on finance, remarked: "I feel that we ought not to be forced, as we are now being forced by the Administration, to pay off this indebtedness with undue rapidity" (p. 9704). Borah, on the other hand, spoke for more than himself when he said: "There are some of us who do not care very much about tax reduction at this session. We would prefer to apply the surplus to the public debt" (p. 9045). The more truly progressive Republicans could go further, for their theory holds the bolder implications of fiscal reform through taxing and spending. From them, ironically, came support for the Administration's vigorous contention that the estimated surplus would not allow the reduction of \$289,000,000 contemplated by the bill as it passed the House on December 15. At this stage Mr. Garner could proudly say: "The minority has predominated in the consideration of this bill;" and Mr. Tilson could do no more than hope that "when the bill comes back to us again it may be a very different bill" (p. 719). The consideration of the measure in the upper house afforded practically the only party roll calls there during the session,

Democrats) to 38 (37 Republicans, 1 Farmer Labor); by the rejection of a committee amendment to make the income tax reductions retroactive by 54 (13 Republicans, 40 Democrats, 1 Farmer Labor) to 28 (27 Republicans, 1 Democrat); and by the adoption of the Norris amendment for publicity of returns by 27 (12 Republicans, 14 Democrats, 1 Farmer Labor) to 18 (13 Republicans, 6 Democrats). The retention of the estates tax, furthermore, was sustained against Bingham's motion by 30 (11 Republicans, 19 Democrats) to 43 (25 Republicans, 17 Democrats, 1 Farmer Labor). In the end the graduated corporate income tax was voted out and dropped in conference; so, too, were the surtax reductions and the provision for publicity of returns. The conference report was accepted in the House on May 26 without opposition. In the Senate a vote was had only on the provision for income tax publicity, which lost by 23 (11 Republicans, 11 Democrats, 1 Farmer Labor) to 57 (27 Republicans, 30 Democrats). The bill was approved on May 29 (Public No. 562). The prospective net reduction was put at \$222,485,000, but because of deferred dates in the inauguration of some of the changes, the curtailment in the present fiscal year will probably be much less.



aside from those on formal organization. Even so, the bill that passed the Senate in May flouted the Administration's policy at some important points, as in the repeal of the automobile sales tax and the retention of the federal estates tax. Indeed, keeping the estates tax was the price of the bill. Had the Senate not been willing to abandon the idea of its elimination, the Progressive Republicans would have joined with the Democrats in voting for a bill that would have forced the President to choose between self-stultification and a veto.

Flood relief afforded a clear case of executive influence in shaping the details of legislation, but a dubious test, at the best, of the President's ability to carry his original point. The bone of contention in the consideration of the bill<sup>25</sup> was the question of local contributions, for there was little will in Congress to play engineer in deciding mooted technical points.<sup>26</sup> The President indicated his position when, in send-

<sup>25</sup> The Mississippi flood of 1927 had given rise in June to talk of an extra session, and in default of that it was assumed that there would be important action in the regular session. The "Jadwin plan" in its original form contemplated work totaling \$296,400,000, i.e., \$185,400,000 for flood control, aided by local contributions amounting to 20 per cent, and \$111,000,000 for channel stabilization, borne wholly by the United States. Hearings were held in both houses. The Reid bill (H. R. 8219) was reported to the House on February 16 by a vote of 11 to 6; it involved plans totaling \$473,000,000, to be borne wholly by the national government. On March 28 a Senate bill (S. 3740)—somewhat nearer to the Jadwin plan, but stripped of the requirement of local contributions—slipped through unanimously in record time for a bill of such magnitude. On April 2 the House committee reported this bill in amended form. There were intimations that the President disapproved of it because the authorizations were too indefinite; indeed he was quoted as saying that it was "the most extortionate proposal that has ever been made on the nation's revenues." The House leaders in close touch with the White House offered amendments. Madden, for example, was beaten on such an amendment by 142 to 73, Tilson by 119 to 67 and 306 to 139. The bill was passed by the House on April 24 by 254 (85 Republicans, 168 Democrats, 1 Farmer Labor) to 91 (86 Republicans, 3 Democrats, 1 Socialist, 1 Farmer Labor) (p. 7426). Even in conference, friction with the President continued. He indicated that he would veto the bill unless changes were made. At this point it was called back into conference, and it was considered in at least one discussion at the White House offices. On May 8 it was said that the President considered the payment of damages to have been the principal difficulty in connection with the measure. The bill was signed on May 15 (Public No. 391). The authorized appropriations total \$325,000,000. On June 8 General Jadwin announced that 12 per cent of the job would be finished within a year and the whole within ten years.

<sup>26</sup> The act in general adopts the project recommended by the chief of engineers, General Jadwin, as given in H. Doc. 90, but among other stipulations

ing the report of the chief of engineers to Congress on December 8, he particularized the advice offered in his regular message: "The federal government may even bear 80 per cent of such costs, but substantial local coöperation is essential to avoid waste." As late as February 17 it was officially said: "There has been no modification in the views of the President relative to local contributions. . . ." Nevertheless, the bill (S. 3740) that passed the Senate unanimously on March 28 contained no provision for direct local contributions. As reported in the House on April 2 (H. Rept. 1100), it paid lip service to the principle, but declared "no local contribution to the project herein adopted is required." The President's interpretation of the meaning of local contributions tended to shift. The underlying idea in the plan under consideration was the relief of the main channel rather than high levees or the more ideal and perhaps ultimate solution of reservoirs. This fact enhanced the importance of flowage rights, spillways, rights of way for levees, and protection against damages. Concessions on these points could be construed as local contributions. Enough were made to enable the President to pronounce himself satisfied, if not wholly pleased, with the measure.

The problem of naval construction, given a new turn by the mis-carriage at Geneva, brought the Administration before Congress with an ambitious program which the House cut in half and which the Senate sidetracked. It was understood that the Secretary of the Navy had the endorsement of the President when on December 14 he presented a nine-year plan for the construction of 25 light cruisers, 9 destroyer leaders, 32 submarines, and 5 aircraft carriers—all at a cost estimated at \$725,000,000. Such a program, said Mr. Wilbur, is "in no sense competitive but is based on the needs of our navy as determined by the Secretary of the Navy upon the technical advice of the general board of the navy." None of the vessels, except the aircraft carriers, he added, are of types covered by the Washington treaty. The proposal evoked widespread protests. By February it was said that the President considered the cruisers most important and would be content with that feature rather than see the whole defeated. In

it provides for a board of three—the chief of engineers, the president of the Mississippi River Commission, and a civil engineer appointed by the President from civil life—to consider engineering differences between the plan of the chief engineers and that of the commission, subject to the final decision of the President.

the end the bill, as reshaped by the committee and introduced on February 28 (H. R. 11526), authorized 15 cruisers and one aircraft carrier, at a cost of \$274,000,000.<sup>27</sup> The President incidentally won his point that discretion be allowed him to suspend the program in the event of a future limitation agreement. Taken on the floor by a special rule adopted by 322 to 13 (12 Democrats, 1 Republican), the bill passed on March 17 without a roll-call; the division was 287 to 58. Burton of Ohio confessed himself "gravely disturbed by the ambitious program." On the other hand, when a member asked "Why did not the committee give us what President Coolidge asked for—a real navy?" the ranking minority member of the committee (a supporter of the bill) replied: "In our judgment the naval mission did not require what the President recommended. . . . " The bill was formally reported to the Senate on May 3, but other business interfered. On May 26 the Senate, by a vote of 44 to 22, refused to take it up in place of Boulder Dam. In its deflated form, but still the biggest construction proposal in many years, the bill awaits action in the second session.

The veto for a second time of the bill for farm surplus control<sup>28</sup>

<sup>27</sup> Only one member dissented, i.e., McClintock, an Oklahoma Democrat, whose minority report proposed 15 submarines and alterations on existing battleships to enable them to carry aircraft, calling for \$93,000,000 in all. McClintock's proposal, offered as an amendment in committee of the whole, was rejected by 22 to 129. On March 15 Representative Huddleston took notice unfavorably of Secretary Wilbur's presence on the floor, leading to some comment on the practice (pp. 4962-3).

<sup>28</sup> The McNary-Haugen bill (S. 1176, rewritten as S. 3555; H. R. 7940, rewritten as H. R. 12687). Mr. Aswell of Louisiana, ranking Democrat on the committee on agriculture, introduced H. R. 9278, which proposed a revolving fund without the equalization fee. Mr. Ketcham of Michigan offered the so-called debenture plan (H. R. 10568) in behalf of the National Grange. The Senate committee unanimously reported the McNary bill on March 8 (S. Rept. 500). The House Committee voted to retain the equalization fee by 13 (7 Republicans, 6 Democrats) to 8 (6 Republicans, 2 Democrats), and rejected the debenture plan by 13 to 8. The bill itself was reported in the House on April 15 by 15 (9 Republicans, 6 Democrats) to 6 (4 Republicans, 2 Democrats) (H. Rept. 1141). The Senate acted first. On April 11 it decided to increase the revolving fund to \$400,000,000, by a vote of 42 (16 Republicans, 25 Democrats, 1 Farmer Labor) to 30 (22 Republicans, 8 Democrats). On April 12 it refused to strike out the equalization fee, the vote being 31 (18 Republicans, 13 Democrats) to 46 (22 Republicans, 23 Democrats, 1 Farmer Labor). The vote on final passage on April 12 was 53 (24 Republicans, 28 Democrats, 1 Farmer Labor) to 23 (14 Republicans, 9 Democrats), with 2 Democrats and 3 Republicans paired for and 3 Democrats and 2 Republicans paired against it. The House at

raises more than a campaign issue; it sharpens the old, perhaps insufficiently considered, question of the ambiguities of representation under presidential government. That such a bill would pass was universally assumed. When it was evident that the equalization fee was at once considered an indispensable feature and an insuperable objection, the inevitability of a veto was nearly as widely taken for granted. How came the fee to be crucial? The question may well be made a leading one. Although the President had said in his regular message that "the most effective means of dealing with surplus crops is to reduce the surplus acreage," he was willing that there should be machinery to provide aid from a revolving loan fund to help the coöperative movement in meeting "surpluses clearly due to weather and seasonal conditions." This was a guarded statement, to which the veto message recurred; but it was repeatedly said that the President would have signed a measure like Aswell's, even though it held the possibility of losses to the government. There were anomalies here; it seemed a bit illogical that the agrarians should contend for the duty of paying costs whereas the opponents of government in business should appear to be willing to be careless with huge revolving funds. One view of the matter is that the proponents of the measure were interested primarily in its effect on the fortunes of certain candidates—Lowden, and perhaps Dawes—and that they were insistent on the equalization fee because they found the President firmly opposed to

once voted to substitute S. 3555 for the House bill. Debate began in late April. An upset threatened on May 2, when the committee of the whole voted by 141 to 120 to insert the Aswell bill as an amendment to one of the sections. The proponents of the equalization fee rallied, however, and all the other sections in the original bill were retained. On a critical roll-call in the House next day, Aswell's substitute was rejected finally, 146 to 185. On May 3 the bill passed the House by 204 (101 Republicans, 100 Democrats, 2 Farmer Labor, 1 Socialist) to 121 (68 Republicans, 53 Democrats), with 18 Republicans and 18 Democrats paired in favor of it and 27 Republicans and 9 Democrats paired against it. The conference report was adopted in the House on May 14, 205 to 117, and in the Senate on May 16 without a record vote. The President vetoed the bill on May 23; and an attempt in the Senate to override the veto on May 25 failed narrowly by 50 (20 Republicans, 29 Democrats, 1 Farmer Labor) to 31 (19 Republicans, 12 Democrats). Four senators who had voted for the bill on April 12 voted to sustain the veto: Curtis, Waterman and Sackett, Republicans, and Fletcher, Democrat. A further phase of the matter was the attempt of Senator Reed of Missouri to attach the debenture plan to the tax bill; his rider was rejected by 23 (5 Republicans, 18 Democrats) to 53 (33 Republicans, 19 Democrats, 1 Farmer Labor) (p. 9697).

that feature.<sup>29</sup> It seems equally logical to the writer, and even sounder, to believe that the Administration, having found the friends of the measure determined on the fee, thought it good tactics to center their objections on this point. It opened several effective lines of attack: the high grounds of constitutionality; the easy confusion of fee-fixing and price-fixing; administrative complexity; and the objection of some farm elements to paying for what they counted tardy redress.<sup>30</sup> Yet Representative Fort—a preëminently intelligent and active antagonist of the measure—was quoted after a call at the White House as saying that the bill without the equalization fee but with the provisions for marketing and insurance agreements would be just as objectionable. The underlying issue, after all, was the permanency and pervasiveness of the proposed governmental marketing machinery.

Presidential dislike of the proposal for government operation of Muscle Shoals<sup>31</sup> was consistent but less clearly announced. In one important respect at least, the viewpoint of Senator Norris was shared by the President in his annual message: "Development of other methods shows that nitrates can probably be produced at less cost than by the use of hydroelectric power. . . . This leaves this project mostly concerned with power." Senator Norris thus summarized the situation. "Every bid that is being made is a power bid. I do not care.

<sup>29</sup> In this connection, for example, see the remarks of Representative Aswell p. 7590, and Senator Brookhart, p. 6425. An attack on Herbert Hoover, prepared by George N. Peek (who remained the chief strategist of the forces working for the bill), is found at pp. 6174-79. It is interesting that the percentage of Democratic members of the House who voted for the McNary-Haugen bill increased from 57.1 in 1927 to 65.5 in 1928, whereas the percentage of Republicans voting for it increased from 51.5 to 56.6. It is noteworthy also that both Democratic senators from New York voted for it, and that 6 Democratic members from New York City voted for it or were paired in favor of it in 1928.

<sup>30</sup> Senator Brookhart, who opposed the equalization fee, said on this point: "As a measure of comparative justice, I have provided in my substitute that the government shall pay the losses of the export corporation up to \$600,000,000 (p. 6061). This led Senator Norbeck to observe: "This seems to be a case where we have to contend with the real conservatives and the real radicals joining against the farmer. We have not only got to fight Boston on this bill, but we have to fight Brookhart" (p. 6526).

<sup>31</sup> S. Jt. Res. 46, offered by Senator Norris. The Madden-Willis bill (H. R. 44, revised as H. R. 8305—S. 2786) embodied the one outstanding private bid—that of the American Cyanamid Company. During the consideration of S. Jt. Res. 46, Senator Harrison offered an amendment that virtually revived the Underwood plan (passed by the Senate in 1925 by 50 to 30), for a lease accompanied by the guarantee of a production of 40,000 tons of fertilizer annually. It was rejected by 48 to 26.

how you disguise it by a beautiful fertilizer name . . . it is power just the same, power; and if you get fertilizer under the cyanamide process, you will have to subsidize it by giving it enough cheap power to make up the losses" (p. 4815). This viewpoint animated the measure that passed the Senate on March 13 by 48 (20 Republicans, 27 Democrats, 1 Farmer Labor) to 25 (15 Republicans, 10 Democrats). It is true that it proposed to authorize the Secretary of Agriculture to use facilities at Muscle Shoals for experiments in the production of fertilizers by the cyanamide process and, if it proved commercially feasible, to produce and sell them in quantity. The real significance of the measure, however, lay in the direction to the Secretary of War to complete the installation of power units and to sell the surplus power, giving preference to governmental as against private bodies and requiring utilities purchasing power to agree not to charge prices above those fixed as reasonable by the Federal Power Commission. The House committee introduced changes that gave greater emphasis to fertilizers, and the front ranks of the opposing lobby shifted accordingly; but in the end the gist of the measure remained the same. Vainly, at the last moment, a substitute was offered by the chairman of the rules committee, proposing to limit fertilizer manufacture more strictly to experimental purposes and to sell the surplus power to the highest bidder; it received 119 votes to 151. On May 16 the joint resolution passed the House by a division of 251 to 165. Two significant House amendments were accepted in conference. One proposed to vest the management in a Muscle Shoals Corporation of the United States. The other proposed a new dam (the Cove Creek Dam, so-called) on the Clinch River, a tributary in Tennessee, to serve as a regulator of high water and a means of conserving navigation and secondary power. It was this feature that furnished the immediate excuse for filibustering in the Senate against the conference report (above p. 659). On May 25 the conference draft was agreed to in both chambers: in the Senate by a vote of 43 (16 Republicans, 26 Democrats, 1 Farmer Labor) to 34 (22 Republicans, 12 Democrats); in the House by 211 (73 Republicans, 135 Democrats, 2 Farmer Labor, 1 Socialist) to 146 (122 Republicans, 24 Democrats). When midnight came on June 7, however, the joint resolution was still unsigned. Three other measures fell victim with it to the assumed power of pocket veto.<sup>32</sup>

<sup>32</sup> H. R. 13383, for a five-year fishery program; H. Jt. Res. 238, to double the credits for veterans' preference; and a private bill.

It is an extraordinary commentary on the costiveness of constitutional law that there should be uncertainty at this late day regarding the legal effect of the President's failure to sign a bill between two sessions of Congress. Yet doubt there is, and some contend that the joint resolution affecting Muscle Shoals has become law. Support for this view is found in a report of the House committee on judiciary in the second session of the 69th Congress, and also in two subsequent rulings on points of order in the House while in committee of the whole.<sup>33</sup> The opposite view, however, was taken by the Court of Claims on April 16, 1928.<sup>34</sup> Regardless of the unsettled points of law and the obvious politics of the situation, there is everything to be said for the view of Senator Norris that such a matter as Muscle Shoals deserved a veto message which would have placed it before Congress for possible consideration in December.<sup>35</sup>

*The Legislative Product.* In enacting 993<sup>36</sup> public and private laws and resolutions, the session topped even the previous high mark of 896 in the first session of the 69th Congress. There was also an increase in the measures introduced—14,750 items in the House, compared with 13,909, 10,481, 9,775, and 11,419 in the long sessions back through the 66th Congress. In addition, 4,600 bills and 451 resolutions were introduced in the Senate.

Congress is slow to seek effective relief from this mass of detail by delegating power to administrative or other agencies. In the recent session, however, the House took one step in this direction on February

<sup>33</sup> H. Rept. 2054, 69th Congress, Second Session, which favorably recommended a resolution to declare that H. R. 5218, passed a few days before the adjournment of the first session, had become law despite the failure of the President to sign it. The rulings referred to were on February 26, 1927 (vol. 58, pp. 4928-34) and December 9, 1927 (vol. 69, pp. 396-402).

<sup>34</sup> *Okanogan, etc., Tribes of the State of Washington v. U. S. Court of Claims*, decided April 16, 1928: "The attempted distinction between adjournment of one or the other session is unsound." It was said appeal might be taken. For subsequent comment, see *U. S. Daily*, June 5 and 14, 1928.

<sup>35</sup> A caustic statement by Senator Norris was issued on June 8. *U. S. Daily*, June 9, 1928. Some remarks by Mr. Norris indicated that he might seek to have Congress raise the legal issue, as it conceivably might do in connection with appropriation legislation.

<sup>36</sup> Of the 993 items, 638 were House bills, 283 Senate bills, 46 House joint resolutions, and 26 Senate joint resolutions: so that, formally considered, 68.8 per cent of the measures approved by both branches originated in the House. The statistics on this and related points are those of E. F. Sharkoff, tally clerk of the House.

17, by passing a federal tort claims bill (H. R. 9285), by a vote of 280 to 65. It proposes that the heads of departments shall adjudicate claims up to \$5,000 in order to relieve the committees on claims of a burden which the chairman in the House pronounces intolerable. Bridge bills, on the other hand, seem likely to remain; a growing suspicion in Congress toward applications for toll bridges is reacting, with doubtful logic, against the suggestion that the whole matter be transferred to an executive department. It would be a mistake to exaggerate the trouble involved in measures like these, which follow forms set by the committees and are made contingent on compliance with prior general legislation. It is a greater mistake to allow a superficially successful routine to conceal the problem of unburdening Congress.

A bare list of enactments of interest is offered for convenience, at the cost of some repetition. The order is not significant; there is no single criterion for judging the measures' relative importance.

(1) The Revenue Act of 1928 (H. R. 1, approved May 29, 1928, Public No. 562. Above, p. 661) makes changes which will cause an estimated net reduction of \$225,295,000. Outstanding items were the lowering of the corporation income tax from  $13\frac{1}{2}$  to 12 per cent; an increase in the exemption granted to small corporations; the repeal of the automobile sales tax; and the increase to three dollars of the exemption in the tax on theatrical admissions.

(2) The act for the control of floods on the Mississippi River and its tributaries (S. 3740, approved May 15, Public No. 391. Above, p. 663).

(3) The Merchant Marine Act of 1928 (S. 744, approved May 22, Public No. 463) was pronounced by the majority leader to be "the most important piece of constructive legislation" of the session. It would hardly have drawn an encomium from this source if the House had not turned inside out the bill passed in the Senate on January 31, by a vote of 53 (19 Republicans, 33 Democrats, 1 Farmer Labor) to 31 (23 Republicans, 8 Democrats). This had been framed with a suspicious eye on some sales pending before the Shipping Board; it authorized replacements, but its salient feature was the requirement that ships should be sold only on unanimous vote of the Board. Completely changed in the House committee, the bill passed on May 5 without a roll call. The conference report was piloted through the Senate by a vote of 51 (28 Republicans, 23 Democrats) to 20 (9 Republicans, 11 Democrats). In its final form it reiterated the policy



of private ownership announced in 1920; it permitted sales on the vote of five members of the Shipping Board; it authorized an increase of the revolving fund to \$250,000,000, to be loaned at interest rates nearly as low as the government's own, when vessels built with government aid are in the foreign trade; it provided that the government shall carry the insurance on vessels in which it has an interest; it also provided for long-time mail-carrying agreements. Like the Senate draft, moreover, the final act authorized the Board to make replacements and improvements in order to balance and modernize the fleet while it remains in government hands.

(4) The Congress that rewrote the merchant marine bill in the House's terms nevertheless supported public operation of barge lines. A statute enacted without a division increased the capital stock of the Inland Waterways Corporation from five to fifteen million dollars, authorized the extension of its facilities to the upper Mississippi, directed a survey of the possibility of installing them on the inland water route on the eastern seaboard (a Senate amendment), and in addition ordained joint rail and water rates on goods moving by barge (H. R. 13512, approved May 29, Public No. 601).

(5) Child labor in the District of Columbia was regulated by a measure (H. R. 6685, approved May 29, Public No. 618) which the President is said to count among the three most important enactments of the session. Revising the law on this subject for the first time since 1908, the act is abreast of the standard of progressive states and may well be taken as a model. Its comprehensive and complicated provisions are a rebuke to propagandists in certain sections who now throw dust by stressing mere minimum age limits without attention to collateral provisions, exceptions, and above all to administrative procedure.

(6) Federal aid to states along well-established lines was endorsed by two statutes especially—apart from the always numerous items in appropriation and special acts. The Ketcham Act (H. R. 9495, approved May 22, Public No. 475) supplemented the Smith-Lever Act of 1914 by an additional and continuing authorization of \$1,440,000 annually in order to make possible the employment of 700 more county agents, at least 1,500 additional home demonstration agents, and 1,650 additional leaders of juvenile work. The authorization of \$75,000,000 annually for federal aid in road-building was provided for the fiscal years 1930 and 1931 by another act (S. 2327, approved May 26, Public No. 519); and still another (S. 1341, approved May

21, Public No. 458) somewhat liberalized the treatment of sparsely settled, public-land states.

(7) A ten-year program of forest research, including the maintenance of experiment stations in various regions and involving a maximum annual expenditure of \$3,500,000, was authorized by an act (S. 3556, approved May 22, Public No. 466) which the Department of Agriculture declares to be the most fundamental piece of forestry legislation since the Clarke-McNary Act of 1924. Acquisitions for water-shed protection begun under the Weeks Act of 1911 were furthered by an authorization aggregating \$8,000,000 for the years through 1931 (S. 1181, approved April 30, No. 326).

(8) Postal rate reduction was again threatened by a conference deadlock,<sup>37</sup> but a compromise between the restoration of the 1920 and the higher 1921 second class rates was reached, and a bill that carries reductions in second, third, and fourth class rates totaling \$16,000,000 was approved on May 29 (H. R. 12030, Public No. 566). It is hoped, of course, that lower rates will bring more business and turn seeming losses into gains. This, largely, was the theory behind the act reducing air mail rates (H. R. 8337, approved May 17, Public No. 410). Instead of ten cents a half-ounce, a minimum rate of five cents per ounce was authorized; in addition, air mail contracts may now be made for ten instead of four years.

(9) The brief temporizing act (S. 2317, approved March 28, Public No. 195) by which the Federal Radio Commission was continued with full powers until March 16, 1929 (when its active functions will pass to the Department of Commerce in accordance with the Radio Act of 1927) draws most of its interest from the House amendment directing "an equal allocation" of broadcasting facilities among the five zones and "a fair and equitable allocation" among the states within each zone according to population.<sup>38</sup>

(10) The Settlement of War Claims Act of 1928 (H. R. 7201,

<sup>37</sup> The estimated cuts in the House bill totaled \$13,400,000, but in the Senate the ideas of McKellar, ranking Democrat, triumphed over those of Chairman Moses and the slashes were increased to \$38,550,000. The presidential eyebrows lifted; Moses despaired of agreement; but at the last minute a compromise was patched up.

<sup>38</sup> The amendment was adopted by 236 to 134 after the House had voted, 168 to 140, against a ruling of the chair sustaining a point of order against it (p. 4767). Action in the Senate was tied up with the question of confirmation of four members of the Radio Commission. They were confirmed on March 30, but the vote on one was said to have been 36 to 35.

approved March 10, Public No. 122) hardly belongs to the recent session, for it had virtually passed the 69th Congress when it fell victim to the March filibuster. Renewed promptly in the 70th Congress, it slipped through the House as early as December 20 on a division of 223 to 26. With some changes, including the incorporation of provision for Austrian and Hungarian claims, it passed the Senate on February 20 after a minor controversy regarding payments to maritime insurance companies and the amount of compensation to be allowed for ships, patents, etc. The maximum is \$100,000,000.

(11) Garnered likewise from the storm-caught crop of 1927, a measure for the settlement of the Serbian indebtedness was revived and passed (H. R. 367, approved March 30, Public No. 231).<sup>39</sup>

(12) Despite seemingly general acceptance of the restrictive policy, immigration continues to incite legislative action. At the close of the session the House committee was authorized to hold interim hearings on more than a hundred bills referred to it. So far as immediate results in the session go, the restrictionists lost a little ground. The date of the operation of the national origins clause in the act of 1924 was postponed for a second time, now to July 1, 1929 (S. Jt. Res. 113, approved March 31, Public Resolution No. 20).<sup>40</sup> A mild concession to criticism of the quota system was proffered in another measure (S. Jt. Res. 5, approved May 29, Public Resolution No. 61) which gave a preferred status, within the quotas, to wives and children under 21 of aliens already in the United States.<sup>41</sup>

<sup>39</sup> This is practically the last of the debt settlements. The failure of a somewhat related piece of legislation may be noted here. H. Jt. Res. 247 proposed to empower the Treasury to join with Austria's other creditors in facilitating a \$100,000,000 loan by subordinating their liens to the new loan. The measure was reported in the House and a special rule was offered, but inexplicably neither came to a vote.

<sup>40</sup> "Computations are indefinite and uncertain," remarked Senator Johnson, "and the experts who made them want more time." It seems that the application of the clause would increase the quotas of sixteen countries—(notably Great Britain and Northern Ireland and, in much lesser numbers, Italy and Russia), and would decrease those of fourteen countries (notably Germany, the Irish Free State, the Scandinavian countries, and Poland).

<sup>41</sup> Hearings were held in both houses on bills to extend the quota plan to the Western Hemisphere. With the departments of State, Interior, and Agriculture seemingly in opposition, with the Labor Department's support qualified, and with beet-sugar growers and southwestern railroads and agriculturalists against the change, the progress of such bills promised to be slow. A bill (H. R. 10078) to make deportation procedure more drastic was reported in the House on January 30, almost in the form in which it passed in 1926.

(13) Fundamental banking legislation was not expected so quickly on the heels of the 1927 act.<sup>42</sup> The conditions under which permission may be given for the interlocking of bank directorates were liberalized (H. R. 6491, passed by the House 141 to 191 on the motion to recommit, approved March 9, Public No. 120).

(14) In the field of judicial procedure, likewise, interest attaches rather to pending<sup>43</sup> than to completed legislation. One act deserves mention. The writ of error was abolished in civil and criminal cases, with the proviso that "all relief which heretofore could be obtained by writs of error shall hereafter be obtainable by appeal" (S. 1801, approved January 31, Public No. 10; amended after consultation with a committee of the Supreme Court, who complained of needlessly increased appeals, by H. R. 12441, approved April 26, Public No. 322).

(15) Apart from the vetoed surplus control bill (above, p. 665) and the measures already mentioned in connection with the principle of federal aid, little agricultural legislation claims attention. Clean-up and other methods for the control of the European corn-borer were contemplated by the authorization of an appropriation of \$7,000,000 (H. R. 12632, approved May 24, Public No. 505). An appropriation of \$5,000,000 was authorized to aid states in compensating farmers for losses incurred in establishing cotton-free zones against the spread of the pink boll-worm (S. Jt. Res. 129, approved May 21, Public Resolution No. 47).

(16) The shadow of the receding World War shows little tendency to taper so far as the inevitable batch of amendments to adjusted compensation, World War veterans', and other legislation of the kind are concerned. Outstanding, perhaps, was the measure for the retirement of disabled emergency officers, repeatedly blocked in Congress

<sup>42</sup> In the background hung the larger questions involved in the so-called stabilization proposal (the Strong bill, H. R. 11806, for example) and the attempts to restrict speculative credits. In the latter connection, Senator LaFollette's resolution was reported favorably on April 30, 4 Republicans and 3 Democrats being in favor and 3 Republicans and 2 Democrats opposed (S. Res. 113, S. Rept. 1124).

<sup>43</sup> A measure (H. R. 5623) to permit declaratory judgments under certain circumstances passed the House on January 25. A proposal (S. 749) to allow the Supreme Court to make uniform court rules for common law actions was unfavorably reported by a vote of 10 (3 Republicans, 7 Democrats) to 5 (all Republicans). Reaching much further than these, however, is Norris' bill (S. 3151), favorably reported in the Senate, to deprive the federal district courts of such civil jurisdiction as arises from diversity of citizenship. The delay of the anti-injunction bill (S. 1482) has been explained elsewhere (above, p. 655).

in recent years and passed at last over the President's veto (S. 777, Public No. 506).

(17) On the administrative side,<sup>44</sup> the Welch Act (H. R. 6518, approved May 28, Public No. 555) amended the Classification Act of 1923 with a view to salary increases in the departments, which are likely to aggregate \$20,000,000.

*Resolutions and Investigations.* As long as investigation and admonition retain their relative importance in the rôle of government, the resolutions of a single chamber fall within a realistic view of the legislative product. The effects of the Walsh resolution for an inquiry regarding power utilities may appear in retrospect to have been as real and as far-reaching<sup>45</sup> as those of any recent act of Congress. Even gestures like the McMaster resolution urging immediate tariff revision<sup>46</sup> and LaFollette's motion in support of observance of the tradition of two terms<sup>46</sup> were politically among the most interesting moves of the session. It is the Senate, of course, that has what some call "an absolute rage, a mania, nothing less than a mania, for investiga-

<sup>44</sup> The bill (H. R. 11026) for the coördination of health activities was vetoed (above, p. 661). S. 4382, for changes in the foreign service looking toward more equitable promotions, passed the Senate on May 10.

<sup>45</sup> S. Res. 52, adopted on January 16 by a vote of 54 (12 Republicans, 41 Democrats, 1 Farmer Labor) to 34 (32 Republicans, 2 Democrats). It stated that "many of the rates in existing tariff schedules are excessive", and that "the Senate favors an immediate revision downward of such excessive rates, establishing a closer parity between agriculture and industry . . . ." On the following day, the House sustained the Speaker in holding that it was not necessary to refer it to a committee; the vote was 183 (176 Republicans, 7 Democrats) to 164 (12 Republicans, 151 Democrats, 1 Farmer Labor) (p. 1659). As for House punctilio when the Senate ventures to take the initiative in money-raising matters, see their return of S. Conc. Res. 4 which sought to interpret the meaning of the phrase "imported broken rice" in the tariff act (p. 1578); also their return of S. 789, with Garrett's tart comment: "In view of the numerous times we have had to perform this act, it would be well to quote it [the Constitution] for the benefit of the other distinguished body" (p. 2776).

<sup>46</sup> S. Res. 128, adopted on February 10 by 56 (18 Republicans, 37 Democrats) to 26 (22 Republicans, 4 Democrats). The immediate excitant (LaFollette said) was the action of the New York state leaders. It declared it to be "the sense of the Senate that the precedent established by Washington . . . has become, by universal concurrence, a part of our republican form of government, and that any departure from that time honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions." The original contained the additional words: "that the Senate commends observance of this precedent by the President." On Fess' motion, neatly accepted by LaFollette, this phrase was dropped.

tion."<sup>47</sup> In the House, apart from an interim inquiry by a special committee into the conditions of incarceration of federal prisoners, the only authorization of an investigation was the defensive step of creating a special committee to look into campaign expenditures "in the case of an outstanding occurrence where it should seem that something should be done."<sup>48</sup>

Several of the Senate investigations were intrusted to special committees: the wind-up of the inquiry into the senatorial primary elections of 1926 (S. Res. 10 and 178. Above p. 652); preconvention and election campaign expenditures in 1928 (S. Res. 214 and 234), enlarged to include war-time sugar transactions (S. Res. 255); the New Jersey senatorial primary of 1928 (S. Res. 232); and appointments and dismissals in the civil service since 1919 (S. Res. 154). A larger number of inquiries were put in charge of standing committees or their subcommittees. The committee on public lands and surveys was instructed to revive the investigation of the naval oil leases, now with special reference to the Continental Oil Company (S. Res. 101, adopted in executive session on January 9). Its subsequent hearings elicited Will Hays' interesting after-thoughts, provoked R. W. Stewart's defiance and unsuccessful prosecution for contempt,<sup>49</sup> and

<sup>47</sup> The sneer was that of Senator Bruce, who added that Walsh of Montana "seems to find the same degree of pleasure in investigation that some men find in intoxication" (p. 3080).

<sup>48</sup> H. Res. 232. The euphemistic phrase is quoted from the explanation of Mr. Snell in offering the resolution a day before the close of the session. "It is not," he said further, "to be a general snooping committee to go all over the country . . ." (p. 10730). The members are Lehlbach, N. J., chairman, Newton, Minn., Nelson, Me., Republicans, and Ragon, Ark., and Black, N. Y., Democrats.

<sup>49</sup> On February 2 and 3, Stewart, chairman of the board of the Standard Oil Co. of Indiana, refused to answer two questions regarding the Continental Trading Co. On February 3, without debate or a record vote, the Senate ordered his arrest in order to compel an answer (S. Res. 132). Taken temporarily from the custody of the sergeant-at-arms by virtue of a writ of habeas corpus, he was remanded on February 23 and thereafter prosecuted on appeal to the Court of Appeals of the District of Columbia. On April 24 he testified before the Senate committee. The order of arrest was accordingly vacated by the Senate, but the resolution (S. Res. 207) expressly indicated a desire that the prosecution of Stewart for the crime of contempt (for which he had been indicted in the meantime) should take its course. He was brought to trial on May 30 and acquitted on June 14, after a jury deadlock of over twenty hours. S. Res. 207 had directed the district attorney to look into the possibility of an indictment for perjury. This remains open.

led to the filing of a report at the close of the session.<sup>50</sup> The committee was also empowered to look into leases and contracts in the Salt Creek field in Wyoming (S. Res. 202, adopted April 30). Other investigations assigned to various standing committees of the Senate were: strike conditions in the coal fields (S. Res. 105 and 249);<sup>51</sup> the administration of Indian affairs (S. Res. 79); the decline of cotton prices despite the short crop of 1927 (S. Res. 142); the conduct of the Dallas reserve bank (S. Res. 152); the sinking of the S-4 (S. Res. 205);<sup>52</sup> the extension of national parks (S. Res. 237); the alleged purchase of presidential postmasterships (S. Res. 193); and unemployment and the means of its relief and avoidance (S. Res. 219, not to be confused with S. Res. 147, which asked information on unemployment from the Department of Labor). The ability to draw stipulated amounts from the contingent fund of the Senate is a vital feature of such authorizations. In the current legislative appropriation act the item for "inquiries and investigations" has been increased from \$100,000 to \$250,000.

A number of the Senate's resolutions were directed to administrative agencies. Four requests for special studies went to the Tariff Commission; three others that called for fresh investigation went to the departments; sixteen—"questions," some of them, in the American manner—asked for information already on hand regarding precise points. The Federal Trade Commission was ordered to report on chain stores (S. Res. 224) and on power utilities (S. Res. 83). The original

<sup>50</sup> S. Rept. 1326, Part 2, which is printed with useful chronological summaries of the whole naval oil reserve scandal in the *Record*, May 29, pp. 10649-74. The original investigation had been ordered by the 67th Congress (S. Res. 282, adopted April 28, 1922), but had come to a halt in 1924 when Sinclair refused to testify.

<sup>51</sup> An inquiry was conducted in the field under S. Res. 105, adopted February 16. Senator Reed of Pennsylvania remarked at the time: "... the greatest industry save agriculture is in a similar plight . . . there exists at this time the most intense suffering on the part of all who are in that industry, union and non-union, operator and miner . . ." (p. 2410). Numerous bills were introduced, aimed at the chronic disorganization, but no action was taken.

<sup>52</sup> Originally the Administration proposed that the investigation should be by a presidential commission. This passed the House on January 7 (H. Jt. Res. 131) and was reported in the Senate by a strict party vote in committee. It was amended on the floor in favor of a joint congressional committee by a vote of 51 (8 Republicans, 42 Democrats, 1 Farmer Labor) to 32 (all Republicans). In the end the Senate voted to have its own inquiry, since the House would not accept the conference report.

resolution on the latter point proposed that the inquiry (stressing holding-company control and methods used in influencing public opinion and elections) should be conducted by a special committee of the Senate. An amendment offered by Senator George was adopted, however, referring the matter instead to the Federal Trade Commission.<sup>53</sup> The vote in this significant roll call was 46 (28 Republicans, 18 Democrats) to 31 (11 Republicans, 20 Democrats) (p. 3125). The outcome has been unexpected. Scored severely in the debate, the commission has been on guard. The direction of the inquiry has been turned over to McCulloch of Arkansas, a new member. The surprise has been the aggressive competence of Robert Healy, a Bennington lawyer who was made general counsel of the commission scarcely a month before the investigation started, and who has been actively in charge of the hearings.

Even the Supreme Court is not beyond the aim of resolutions of the resourceful Senate. On May 7, by a vote of 46 (26 Republicans, 19 Democrats, 1 Farmer Labor) to 31 (22 Republicans, 9 Democrats), a resolution offered by Senator Norris was adopted in which the Senate "respectfully requests the Supreme Court to permit the said Donald R. Richberg, as counsel for the said National Conference on Valuation, to intervene in said O'Fallon case for the purpose of making oral argument and filing a brief therein" (S. Res. 222, p. 8271).

*Appointments.* In executive session on March 16, following an adverse committee report of 10 to 7, the Senate refused to confirm John J. Esch for reappointment to the Interstate Commerce Commission. The vote was 39 to 29. Mr. Esch was doubtless opposed in part because of his co-authorship of the Transportation Act of 1920. The immediate cause, however, was the fact that his change of vote had brought about a decision in favor of the northeastern coal fields in a recent turn of the long-drawn lake cargo controversy.<sup>54</sup> In view of the previous tradition of virtual life tenure on the Interstate Commerce

<sup>53</sup> The Independent Offices Appropriation Bill (H. R. 9481), as reported, contained a stipulation which would have limited "economic" investigations by the Federal Trade Commission to those directed by *concurrent* resolutions; but this, fortunately, was stricken out in committee of the whole, January 23.

<sup>54</sup> One of the many reverberations of the lake cargo cases was S. Conc. Res. 10, which was adopted on February 9 with one opposing vote, but which was not acted on in the House. In the thin disguise of a request for information, it sought to rebuke the commission for "decisions . . . in any sense influenced by the competitive advantage or disadvantage of the producers in one state, district or section . . . ."



Commission (in the sense that appointments would be renewed), the Esch incident raises even more sharply than the rejection of C. E. Woods on January 25, 1927, the question of the future of the regulatory commissions.

*Appropriations.* There is no longer tall talk about lower expenditures. New slogans are heard. "Prosperity and good times," observes the annual review of the chairman of the Senate committee on appropriations,<sup>55</sup> "demand increased as well as new governmental functions." After all, an impression of general retrenchment could not be floated indefinitely even on the favoring tides of circumstances as mighty as the reduction of the annual interest payments from \$1,024,000,000 in 1920, when the debt was at its peak, to \$670,000,000 (an estimate) in 1929. The appropriations of the recent session—totaling \$4,628,045,035—exceeded those of the preceding year by \$478,542,508. Even when allowance is made for \$120,000,000 thrown on the new Congress by the failure of the second deficiency bill in the Senate filibuster in March, 1927, the increase is \$238,543,508.<sup>56</sup> If there is room for cavil here, it should be directed to the false face previously put on inevitable increases for the normal operations of government. One wonders how much party advantage, let alone statecraft, there is in the turn given by the ranking Democratic member of the House committee on appropriations: "The question is, How long will the business and taxpaying interests of the country stand this rapidly mounting increase of expenditures in the face of repeated assurances given in the past few years that federal expenditures would be reduced or held down to a minimum" (p. 10918).

<sup>55</sup> *Congressional Record*, Appendix, June 7, 1928, p. 10907. The data in the text and in the table on p. 680 are drawn from the summaries presented in this issue, supplemented by some information obtained from M. C. Sheild, the experienced head clerk of the House committee.

<sup>56</sup> Chairman Wood offers the following appropriations in explanation of the increase: war claims act of 1928, \$50,000,000; public buildings, under the act of 1926 and the act for the District, \$44,635,083; extension of foreign service building program, \$2,000,000; aviation increases, \$21,732,818; military post construction, \$13,819,975; naval construction under the act of 1924, \$24,300,000; ammunition storage facilities, \$3,108,159; increase for rivers and harbors (Missouri River) \$5,886,310; relief of Vermont, New Hampshire, and Kentucky in connection with roads and bridges, \$5,197,294; Cape Cod Canal bonds, \$6,230,000; flood control, \$15,000,000. The modesty of the last item should be noted; quite different from appropriations are *authorized* appropriations, which may extend over many years. It may be added that for the fiscal year 1929 the three items of interest, debt charges, and veteran's bureau take 46.7 per cent of the total appropriations exclusive of the Post Office Department.

# RECAPITULATION OF APPROPRIATION ACTS, FIRST SESSION OF SEVENTIETH CONGRESS

Title of Act	Budget estimates, Seventieth Congress, first session	Totals of bills as reported by House Committee on Appropriations	Appropriations, Seventieth Congress, first session	Increase (+) or decrease (—) appropriations compared with budget estimates	Increase (+) or decrease (—), first session Seventieth Congress compared with second session Sixty-ninth Congress
<i>Regular acts, fiscal year 1929</i>					
Agriculture, Department of.....	\$138,129,839	\$132,308,849	\$139,138,793	+\$1,008,954	+\$10,637,054
District of Columbia.....	<sup>a</sup> 37,693,686	37,035,235	37,625,208	—68,478	+1,342,823
Independent offices.....	527,553,802	526,193,111	527,593,111	+39,309	+14,689,303
Interior Department.....	<sup>b</sup> 273,165,839	272,430,789	272,656,039	—509,800	+12,351,019
Legislative Establishment.....	18,072,146	17,113,517	27,746,893	—325,253	+1,313,113
Navy Department.....	361,264,907	359,190,787	362,145,812	+880,905	+45,930,505
Departments of State, Justice, Commerce, and Labor:					
State.....	13,950,955	13,875,955	13,955,955	+5,000	+1,942,068
Justice.....	26,874,742	26,657,730	26,759,342	—115,400	+358,453
Commerce.....	38,071,460	37,545,960	38,136,960	+65,500	+1,509,510
Labor.....	10,960,840	10,968,340	10,968,340	+7,500	+833,824
Total.....	89,857,997	89,047,985	89,820,597	—37,400	+4,643,955
Treasury and Post Office Departments:					
Treasury.....	301,510,218	298,387,018	296,392,018	—5,118,200	+158,810,925
Post Office.....	768,050,042	764,950,042	764,950,042	—3,100,000	+9,613,842
Total.....	1,069,560,260	1,063,337,060	1,061,342,060	—8,218,200	+168,424,767
War Department:					
Military.....	309,781,755	308,766,711	309,601,568	—180,186	+28,982,683
Non-military.....	82,080,258	80,433,158	88,915,653	+6,835,395	+9,752,809
Total, War Department.....	391,862,013	389,199,869	398,517,221	+6,655,208	+38,735,492
Total, regular annual acts.....	2,907,160,491		2,906,585,736	—574,755	+298,058,133
<i>Deficiency acts</i>					
First, 1928.....	200,774,524	198,916,264	200,936,947	+162,422	
Second, 1928.....	155,672,204	99,032,885	146,017,767	—9,654,446	
Total, deficiency acts.....	356,446,729	297,949,150	346,954,705	—9,492,023	+161,342,371
Total, regular annual and deficiency acts.....	3,263,607,220	3,183,806,303	3,253,540,441	—10,066,779	
Miscellaneous relief, claims, and other acts (estimated).....	<sup>c</sup> 65,000		<sup>d</sup> 800,000	+735,000	—9,610,082
Total, regular annual, deficiency and miscellaneous.....	3,263,672,220		3,254,340,441	—9,331,779	+449,790,422
Permanent and indefinite appropriations.....	1,373,704,593		1,373,704,593		+28,752,085
GRAND TOTAL.....	4,637,376,814		4,628,045,035	—9,331,779	+478,542,508
GRAND TOTAL, EXCLUSIVE OF POSTAL SERVICE, FROM POSTAL REVENUES.....			3,851,070,493		+456,904,166

<sup>a</sup> Exclusive of \$42,500 for Freedmen's Hospital transferred to Interior appropriation bill.

<sup>b</sup> Includes \$550,000 transferred from first deficiency and \$42,000 from District of Columbia estimates and exclusions of \$222,000 transferred to first deficiency bill.

<sup>c</sup> House Document No. 149, Water Boundary, United States and Mexico.

<sup>d</sup> Estimated.

The total appropriations have been so invariably under the budget estimates that the circumstance can be taken for granted, although several instances seem to have had little influence on editorial stereotypes regarding a porcine Congress. A net reduction of \$9,331,779 was "reached by a large number of small increases and decreases widely distributed over the entire service."<sup>57</sup>

The practice of routing replies by executive agencies to requests for comment on pending legislation through the Bureau of the Budget, in order to secure a statement whether or not the measure is compatible with the "financial policy of the President" (Budget Circular 49), has evoked criticism that is likely to grow. An interesting though inconclusive discussion of this point was instigated on March 10 by Representative Robert Luce (pp. 4653-9). The gist of his position lay in the distinction he conceived between original legislation and appropriations. "The legislating committee," he said, "is to concern itself with policy and principle; the appropriating committee with prudence and proportion. It is the appropriating committee that should consult the Bureau of the Budget." Mr. Luce's argument gained most of its point, however, from the fact that special rules and suspension of the rules are alike beyond the reach of ordinary bills, that Calendar Wednesdays never go round,<sup>58</sup> that of necessity the run of legislation must pass on the consent calendar, and that at least one member has announced his intention to "object to the consideration of any measure relating to finance that does not contain a formal report from the Director of the Budget."

*Congress and Foreign Affairs.* The rôle of criticism was not wholly neglected, but in the end even the Senate withheld its hand. Nicaragua was, of course, the chief vexation. Various censorious resolutions were introduced, but, aside from many sporadic speeches, action on the floor was confined to attempts to exert control through appropriations. Such was Senator Blaine's proposed amendment to the naval appropriation bill (H. R. 12286) stipulating that after December 25,

<sup>57</sup> There were only three noteworthy increases: agricultural, \$1,008,954, due to an addition of \$1,000,000 for roads and trails; war, \$6,655,208 because of an item for the Missouri River; naval, \$880,905, because of increase of authorized enlisted strength.

<sup>58</sup> Eight only of the 46 committees had been reached up to March 10, with about 23 possible Calendar Wednesdays left for 38 committees. Royal Johnson remarked: "The committee of which I am chairman (immigration and naturalization) has not been called on a Calendar Wednesday probably for six years" (p. 4657).

1928, no funds carried therein should be used to pay "any expenses in connection with acts of hostility against a foreign power, or any belligerent intervention in the affairs of any foreign nation, unless war has been declared by Congress or unless a state of war actually exists under recognized principles of international law." Before the vote was taken this was amended so that it related specifically to Nicaragua. After five days of debate, the rider was rejected by a vote of 22 (7 Republicans, 15 Democrats) to 52 (33 Republicans, 19 Democrats).<sup>59</sup> Senator Borah spoke against it, pensively: "I was opposed to sending troops to Nicaragua in the first place, and I am most anxious to see them brought out of Nicaragua. But I do not feel that we can come out of Nicaragua in disregard of a situation which we ourselves have created and in disregard of obligations which we have assumed" (p. 7189). A somewhat similar attempt failed earlier in the House during the consideration of the War Department appropriation bill (H. R. 10286), when a rider offered by Collins of Mississippi was rejected in committee of the whole by 71 to 103 and, on a motion to recommit at the time of final passage, by 125 (111 Democrats, 11 Republicans, 2 Farmer Labor, 1 Socialist) to 229.<sup>60</sup>

Treaties seemed to move easily. Including conventions, ratification of fourteen was assented to during the session.<sup>61</sup> Notable among these

<sup>59</sup> Senator McKellar's still more guarded substitute was lost, 20 to 53; Heflin's more drastic one, 15 to 60. On April 16 the Senate had requested the Secretary of the Navy for information about costs, losses, etc., in connection with operations in Nicaragua (S. Res. 198, p. 6772).

<sup>60</sup> Pp. 2904, 2940. The proposed rider read: "Without authorization by Congress no part of the funds appropriated by this act shall be expended in the transportation of any portion of the armed forces provided for in this act to the territory of a foreign country over which the United States does not possess sovereign jurisdiction."

<sup>61</sup> Apart from the arbitration treaties with France, Germany, and Italy, these were: Netherlands, protocol interpreting arbitration treaty of 1913 (p. 3640); Poland, extradition treaty (p. 3640); Honduras, extradition treaty (p. 4890), and another respecting friendship, commerce, and consular rights (p. 10210); Mexico, convention regarding livestock (p. 5709); Greece, smuggling alcoholic beverages (p. 10209); Latvia, friendship, commerce, and consular rights (p. 10205); an additional protocol to the Pan American Sanitary Convention (p. 3639); the new International Radiotelegraph Convention (p. 5305); a convention for the unification of rules regarding bills of lading (p. 5376); and a revision of the International Sanitary Convention of 1917 (p. 5380). Of the 14, seven had been signed in 1928; only two antedated 1927. It may be added that solicitude for the pending treaty on gas warfare led Theodore E. Burton to attempt to eliminate an item of \$55,000 for gas masks from the War Depart-

were three arbitration treaties: with France, signed on February 6 and assented to on March 6; with Italy, signed on April 18 and assented to on May 10; and with Germany, signed on May 5 and assented to on May 10. Delay, on the other hand, met Senator Gillett's proposal regarding the world court: "that the Senate . . . respectfully suggests to the President the advisability of a further exchange of views with the signatory states in order to establish whether the differences between the United States and the signatory states can be satisfactorily adjusted." There was fragmentary debate in the Senate, as on April 9 (pp. 6313-8) and May 1 (7809-14). Why pass such a resolution, argued Borah, unless the Senate first reopens the question of Reservation Five? On May 23 the committee on foreign affairs deferred action by a vote reported to have been 9 (7 Republicans, 1 Democrat, 1 Farmer Labor) to 8 (2 Republicans, 6 Democrats.)

Space has not permitted more than incidental comment on business still pending. It would be a short view of the process of legislation, however, that would seek to appraise the real work of any Congress merely in terms of the measures, resolutions, and treaties finally approved. Usually these are the harvesting—often the easy harvesting—of suggestions that have been long in ripening for the lawmaker's sickle.<sup>62</sup>

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ment appropriation bill; his motion failed by 21 to 70 (p. 2762). The House assumed modest initiative in treaty-making in H. Jt. Res. 268, Public Resolution No. 56, requesting the President to negotiate treaties for protection from liability to military service. Borah's resolution (S. Res. 157) that there should be a restatement of the rules of war at sea in anticipation of the 1931 armament conference remained in the hands of the committee. Nor was there action on far-looking suggestions like S. Jt. Res. 14, by Senator Capper, for the renunciation of war. Burton's resolution (H. Jt. Res. 183) to forbid the export of arms to belligerent countries except with the consent of Congress was reported in the House on January 30, only to encounter opposition which seemed to include the secretaries of war and the navy.

<sup>62</sup> Each year, happily, sees the tendency stronger in Congress to utilize the staffs of the able legislative counsel of Senate and House; they are never adjourned.

## FOREIGN GOVERNMENTS AND POLITICS

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**The New French Electoral Law and the Elections of 1928.** The year 1928 will witness national elections in at least three of the great western democracies of the world. The first of these important electoral contests took place in France on the last two Sundays in April. Following a campaign of unique character, some 8,000,000 voters went to the polls to pass judgment upon the record of M. Poincaré's National Union government—a government headed, strangely enough, by the same man whom the electorate had seemingly repudiated four years earlier. Not only was this contest unusual in that it brought into play certain new kinds of campaign technique, but when carefully analyzed in the light of the operation of the new electoral law, the outcome almost defies any logical interpretation. On the surface, it has been heralded as a great personal triumph for Premier Poincaré as the "savior of the franc." But more than that one cannot say; for he presented his case without the least semblance of a political program, and the party complexion of the newly elected Chamber of Deputies is baffling. Nor is one certain that it faithfully reflects the existing state of public opinion in the nation.

A resumé of the provisions of the latest electoral law, enacted in July, 1927, is necessary for a full understanding of what happened at the polls. In France, as all students of politics know, "electoral reform" is a perennial question. Since 1871 five successive systems of voting have been used: to 1885, the *scrutin uninominal*, or *d'arrondissement*; from 1885 to 1889, the *scrutin de liste*; from 1889 to 1919, the *scrutin uninominal* again; from 1919 to 1927, the *scrutin de liste*, with partial proportional representation; and now a reversion once more to the old *scrutin uninominal*. Hardly was the Chamber of 1924 organized and under way when agitation for a return to single-member constituencies began. In 1925 the Senate voted in this sense by a decisive majority. It was obvious that no one, regardless of party affiliation, wished to go on with the bizarre law of 1919. But agreement upon a substitute system was another matter. In principle, the groups on the Right favored the adoption of a full-fledged plan of proportional representation with the list system; but they could not muster a majority for such a thoroughgoing change as that, even though

Poincaré and Marin in the cabinet apparently wanted it. On the left of the Chamber, particularly among the Socialists, there had been at one time or another in the past many public declarations in favor of P. R. But the Radical-Socialists occupied the key position both on the floor of the Chamber and in the cabinet, and they would have no more of the "unhappy coalitions" engendered by P. R. as it had operated since 1919. Nor did they care to continue with an electoral device which made for perennial fighting within party groups for the strategic first place on the list.<sup>1</sup> The old argument that the deputy ought to be in direct relation with his electors was also advanced. More generally, all the radical and center groups had come to feel that to return to the single-member system of representation would be to construct a workable defense against Communist gains in the Chamber; and in this their instincts were sound, as the results of the recent election strikingly proved.

Though opposed to the *scrutin uninominal* on principle, M. Poincaré refrained, for fear of endangering his fiscal program, from making the matter a question of confidence—this notwithstanding that two or three others, notably M. Marin, stood with him. In fact, he did not even attend the acrimonious debates on the proposition in the Chamber last summer. The Government *projet* was handled mainly by M. Sarraut, minister of the interior and high in the counsels of the Radical-Socialist party. From July 2 to the date of final enactment, July 21, the measure received rough treatment from an unruly Chamber. The cabinet proposal called for only 587 deputies; the bill ultimately adopted raised the number to 612. The Government desired to count only the French population in apportioning representation; the Chamber decided to include aliens in determining the ratio, a change that was demanded principally by the radical deputies from the Southwest and the Midi, into which thousands of Italian and Spanish immigrants have poured since the war.<sup>2</sup>

Added to this was a species of flagrant gerrymandering by the Commission on Universal Suffrage in favor of members of the Chamber who expected to stand for reelection. The *arrondissement* was to be

<sup>1</sup> The writer is indebted to M. Barthélemy, the distinguished chairman of the Commission on Universal Suffrage in the Chamber, for this illuminating insight into the attitude of the radical parties toward P.R.

<sup>2</sup> Only two Radical-Socialist votes were cast for the amendment to exclude foreigners. Cf. *Le Temps*, July 11, 1927. The alien population of France is now nearly two and a half millions, or more than double what it was before the war.

retained as the electoral unit if its population was no smaller than 40,000, and no larger than 100,000. In a case where the population was under 40,000, the fusion of two adjacent *arrondissements*, or parts of *arrondissements*, was to take place; where the figure 100,000 was exceeded there was to be a division into two or more separate circumscriptions. But the electoral map of France finally arrived at contains no fewer than forty-nine exceptions to the rule of the statute.<sup>3</sup> Seventeen constituencies have less than 40,000 population each, while there are thirty-two with more than 100,000. The former include the district of Castellane, in the department of the Basses-Alpes, with 25,258; Briançon, in the Hautes-Alpes, with 25,358; and Villefranche, in the Haute-Garonne, with 38,669. In the group of large constituencies are to be found two with over 130,000 population: the 6th district of Bethune, in the Pas-de-Calais, with 130,308; and the 10th district of Saint-Denis, with 133,947. Nearly all of this latter group are urban in character, notably the "red suburbs" of Paris. Stated differently, these inequalities in the distribution of population mean that 588,000 people have seventeen deputies, or one to 34,600; whereas 3,536,000 are assigned to only thirty-two, or one to 110,500. The Commission's public justification of these discrepancies was that "it was necessary to maintain an equilibrium between the representation of the cities and the countryside."<sup>4</sup> Between the lines, however, anyone who, as did the writer of these pages, attended the bitter debates on the electoral bill in the Chamber could read the sordid story of bargaining for individual and party advantage. It is this fact that also largely explains why the number of deputies was increased by twenty-five, and why a million francs were added to the budget at a time when the Government was refusing to meet the demands of subordinate civil servants for a minimum salary of 8,000 francs, with retroactivity to July, 1926.<sup>5</sup>

Once the struggle over representation was settled, by a majority that consisted mainly of the old *cartel des gauches*, the other provisions of the new law were written quickly. Only two of these need be men-

<sup>3</sup> Data taken from the excellent analysis of the law in *Le Temps*, April 9, 1928.

<sup>4</sup> Quoted in *Le Temps*, July 7, 1927.

<sup>5</sup> It was humorously suggested in the Chamber that if 612 deputies were better than 587, why not 1,000? In reply, M. Albert Milhaud contended that since France was now more "vast" in area than ever, with the return of Alsace-Lorraine, it required a larger chamber; and even in the new plan there would be only 590 metropolitan (non-colonial) seats. Cf. *Le Temps*, July 12, 1927.



tioned here. First is the change whereby the second voting, or *ballottage*, takes place, not two weeks, but only one week, after the day of the first polling.<sup>6</sup> This modification was apparently designed to discourage bargains and temporary coalitions between local party groups, though its efficacy proved dubious in the actual test between April 22 and 29. The second innovation has to do with the printing and distribution of ballots and campaign circulars. In Articles 8 to 14 of the law, it is provided that in each *département* a commission headed by the judge of the civil tribunal and composed of all candidates standing for the chamber, or their designated agents, shall meet at least twelve days before the polling day to arrange for the printing and distribution of two *bulletins de vote* (ballots) and one circular, to be sent post-free to each qualified voter, and one *bulletin de vote* per voter, to be delivered to each *mairie* for use at the polls. The cost of printing is apportioned among the candidates, but whether a candidate takes advantage of the arrangement is left optional.<sup>7</sup> As secretary of the commission, the *greffier* receives a perquisite of 100 francs per candidate!<sup>8</sup>

So far as the other phases of registration and election administration are concerned, the new law does little or nothing to improve the laxity that has long prevailed at the polls in France. Voting by mail was proposed in the Chamber, but the matter was laid over for further study, on the grounds of complexity. A similar fate befell an amendment requiring the presentation of a *livret civique*, with the voter's photograph, at the polls. One deputy amused the Chamber by recounting his experience in "having caused the name of a dog to be removed from the electoral lists;"<sup>9</sup> and M. Pierre Mille, a subtle French humorist, suggested in the press during the recent campaign that since it appeared impossible "to prevent the votes of dead men being recorded, the practice should be regularized by giving everyone the right of disposing of his vote by testamentary disposition. It would then logically follow that, the right of dead men to be electors having been recognized, their right to be elected could hardly be refused, and

<sup>6</sup> As before 1919, an absolute majority is necessary for election the first day, while a plurality, provided it equals one-fourth of the registered voters, is sufficient in the *ballottage*. New candidacies may be entered up to Wednesday night preceding the polling.

<sup>7</sup> Apparently most of the candidates standing in the recent election did so.

<sup>8</sup> One Paris paper intimated that this may have been the reason for the appearance of so many "independent" candidates in the department of the Seine.

<sup>9</sup> Quoted in *Le Temps*, July 10, 1927.

everyone should be allowed to indicate, by similar testamentary disposition, the person who should deputize for him in case, after death, he should be elected a deputy."<sup>10</sup> The problem of election mechanics has never seriously concerned French democracy. Perhaps the day will soon come, however, when the presence of a large alien population will bring the questions of permanent registration and the canvassing of votes to the forefront of French politics.<sup>11</sup>

The recent electoral campaign really began as soon as the Chamber of Deputies adjourned on March 17. Since the first polling day was fixed for April 22, this allowed six weeks for the campaign, a somewhat longer period than usual in French parliamentary elections. Under the new electoral law, candidacies could be declared up to April 17; and what an avalanche of candidates there was! Even for multi-party France, all records were shattered. A total of 3,645 men contested for 612 seats, an average of almost six per seat. In the department of the Seine there were 856 candidates for 59 seats, or fifteen for each place to be filled. But around 1,000 of the total number of candidates stood as independents. Many of them, for the sport of it, announced themselves as defenders of the interests of the "barbers," the "butchers," the "*concierges*", or the "nougat-makers"—"*fantaisistes*" they were dubbed by the Parisian press. A certain M. Duconnaud, landscape gardener by trade, stood for election in the Latin Quarter on a platform that promised to allow hunting in the zoo every Friday, to eliminate poverty, to place moving sidewalks on the Boulevard St. Michel, to build a ship canal that would permit transatlantic liners to dock close to the Sorbonne, and to establish a meteorological institute for barbers "who talk about the weather all the time without knowing a darned thing about it." But it seems that he went too far even for Gallic humor when he proposed to abolish old age. He received only a paltry 200 votes.<sup>12</sup>

Although the campaign was, comparatively, a calm contest, certain forms of propaganda and electoral devices were utilized for the first time in France. From Paris to the provinces airplanes carried bundles of campaign leaflets and handbills to be showered upon villages dotting the countryside. For the first time illustrated colored posters appeared on the "official" billboards, whose space is allotted among the various

<sup>10</sup> Quoted in the *London Observer*, April 22, 1928.

<sup>11</sup> Twice during the debate on the electoral bill woman suffrage amendments were defeated. Cf. *Le Temps*, July 10, 1927.

<sup>12</sup> Quoted from the *Chicago Tribune*, April 30, 1928.

parties and candidates by the police. With their coffers apparently well stocked with funds, the conservative parties were able to resort to this type of appeal much more extensively than were the poorer radical groups. Communist billboards in front of the polls were used to remind the workers of their May-day demonstrations. One particularly interesting innovation was a caricature of the *cartel des gauches* in comic script, showing how its repeated "stupidities" could only culminate in an utter ineptitude to solve the financial crisis of 1926, and then how its leaders had to turn in despair to Poincaré, the implication being that if the Left won in 1928 history would repeat itself.

All in all, the campaign was waged upon the plane of personalities, or rather, around a single person—Poincaré. For the most part, the official declarations of the parties (except the Communists) were either vague banalities or appeals to deep-rooted prejudices or bogies. Each candidate altered his individual appeal to fit his own constituency; and in the country districts especially, where formal speeches counted for little and visits and handshaking for much, the fight often became bitter and "intestinal" in character. To prevent the sowing of too much discord, the minister of commerce finally forbade the diffusion by radio of any political discourse, whether by state or by private stations.<sup>13</sup>

M. Poincaré made only two important speeches during the campaign—at Bordeaux and Carcassonne, on March 25 and April 1, respectively. Speaking in the heart of "radical" territory, where M. Briand had on the eve of the 1924 elections founded the left bloc, the present premier vigorously appealed to the country to support unequivocally the National Union. "The voters had to pronounce themselves for or against *l'union nationale*, not for or against a political formula, but for or against a policy that for two years had been the policy of France."<sup>14</sup> To guide the electorate through the maze of meaningless party declarations, he suggested a four-fold classification of candidates: (1) those Conservatives and Radicals "who have stood by us in the most difficult hours;" (2) the left-wing Radicals, like M. Daladier, titular leader of the Radical-Socialist party, "the intermittences of whose confidences in us have been at times disconcerting;" (3) the Socialists, whose opposition has at least been loyal, and who,

<sup>13</sup> *Le Temps*, April 16, 1928.

<sup>14</sup> As paraphrased by *L'Europe nouvelle*, May 5, 1928.

"if they have not voted for us, have abstained from violent assaults upon us, so as not to hinder an experiment that they regard, no doubt, as sterile, but, nevertheless, as inoffensive;" and (4) the Communists. The latter were vigorously denounced as the party that "takes its orders from abroad," that would destroy parliamentary institutions altogether, that "would sow revolt in our barracks and arsenals."<sup>15</sup> This was a tactic designed to damage the Socialists by scaring away from them middle-class support, and perhaps even to strengthen the Communists by driving into their ranks workers who would resent having their party stigmatized as "loyal opposition."<sup>16</sup> With a weaker Socialist group in the new Chamber, there would be less chance for a reestablishment of the old left bloc.

But at no time did M. Poincaré state just what he was going to do with the franc or when he intended to do it. It was for a "blank check" he was asking. The party truce must continue for four years more so that his program, whatever it was, could be carried to completion. At Carcassonne, it is true, he intimated in carefully guarded terms a willingness to consider proposals to "commercialize" the reparations and debt payments along the lines suggested by various German and American bankers,<sup>17</sup> though such a possibility must not be regarded as affecting in the slightest the Rhineland occupation. No longer the uncompromising nationalist of the Ruhr days, but a man much chastened in spirit, he gave moderate praise to the policy of Locarno and Franco-German *rapprochement*.<sup>18</sup> Whatever one's party member-

<sup>15</sup> Cf. *Manchester Guardian Weekly*, March 30, 1928.

<sup>16</sup> The opposition press characterized this tactic as "*la politique du pire*"—strengthening the extremes in order to weaken the center.

<sup>17</sup> Much was made of Poincaré's statement on reparations and debts by certain American newspapers, notably the *New York Times* (cf. issue of April 2, 1928). But judging from the caustic comments in different French journals, ranging in position from *Le Matin* to *Le Populaire*, one doubts whether any such broad significance can be attached to the Premier's remarks. *Le Petit Journal* ironically advanced the suggestion that all nations use the same day for their national elections, so that the existing crop of "fantastic proposals and projects" (referring to foreign comment on Poincaré's statement) might be squelched. Quoted in *Le Temps*, April 7, 1928. Nothing is likely to be done by France on the Dawes plan revision or debt settlements until after the American election in November. Cf. Senator Berenger's statement quoted in the *New York Times*, June 28, 1928.

<sup>18</sup> At the same time, the conservative republican groups could not refrain from resorting to the use of lurid campaign posters depicting the "Hun" in a most menacing attitude and implying that France had been left defenseless in

ship, by voting for Poincaré and the national union he would be supporting "stabilization within as well as without the borders of France." Or, as the conservative *Temps* differently phrased it, "any party can be unionist; and unionists may exist in any party—except the Socialists and Communists, who preach class war."<sup>19</sup>

The only real opposition to Poincaré among the "republican" groups came from the left wing of the Radical Socialists. The latter found themselves on the horns of a difficult dilemma throughout the campaign. Officially, they had split into two groups as far back as October, 1927, when a minority under the leadership of M. Franklin-Bouillon withdrew from the party congress because it preferred to align itself with the parties of the center and continue to support the Poincaré government. The official majority, after electing a new leader, M. Daladier, adopted a resolution declaring that the existing party truce could be only a "transitory form of parliamentary life." This faction was thinking in terms of another working union with the Socialists on the left, once fiscal stabilization was achieved. Its election manifesto six months later laid special stress upon the Herriot policy of peace, even to the resurrection of the Geneva Protocol and the establishment of equal educational opportunities for the children of all classes up to the university.<sup>20</sup> Small wonder, then, that its press—influential papers like *L'Oeuvre*, *La Volonté*, and *Le Soir*—looked askance at the Carcassonne speech of Poincaré, because it implied the formation of a great "center" bloc that might give the Premier a free hand in the new parliament. Nor is it surprising that there was complaint that their former leaders, Herriot and Sarraut particularly, should have been "lassoed" into his government and made to serve his purpose. For M. Herriot himself, obviously in a rather delicate position at best, was preaching from the platform at Lyons the doctrine that "there is no socialist franc, no radical franc, but only a national franc."<sup>21</sup> The radical press seemingly derived its greatest delight, however, in scathingly chastising Franklin-Bouillon as a

1914 by the pacifist policy of "radical" governments. "Let no good Frenchman be duped again!" Such chauvinistic appeals, however, lack the effectiveness they once had in France.

<sup>19</sup> April 5, 1928.

<sup>20</sup> By this was meant the establishment of what is now known in France as *l'école unique*, whereby secondary education would no longer be institutionally distinct from primary, but would be free for all meritorious children, regardless of economic or social position.

<sup>21</sup> Cf. *Le Temps*, April 21, 1928, for a resumé of his most notable speech.

"renegade" to the cause of anti-clericalism and true democracy; although his attempted "radical union league" cut a rather sorry figure in the outcome of the campaign.

As for the Socialists and Communists, the only "undiluted" elements in the opposition to Poincaré, a few words will suffice. Under M. Léon Blum's "professorial" direction, the former spent most of their time trying to eradicate any lingering notion that they were "revolutionary" in Moscow's meaning of the term. Article after article appeared in *Le Populaire*, Blum's newspaper, studiously avoiding any mention of the items in the orthodox socialist program that might alarm the *milieu* of the subaltern civil servants, small farmers, and modest *rentiers*. On the other hand, the Communists, branded by conservative speakers and placards as "the party of assassins" taking orders from Moscow, conducted intensive propaganda among the industrial workers and soldiers. Since one of the last acts of the old Chamber had been to refuse to release from prison Marcel Cachin and three other Communist deputies for having incited French soldiers to mutiny and desertion, *l'Humanité*, the official Communist organ, could assume a "martyristic" pose—a maneuver that probably gained thousands of votes for the party at the polls.

One other incident of the electoral campaign has, in view of the candidacy of a Catholic for the presidency this year, at least an indirect interest for Americans. This is the extraordinary edict issued by Cardinal Dubois, archbishop of Paris, against the Royalist journal and organization *l'Action française*, of which the co-editor is the vitriolic Léon Daudet, since last summer a fugitive from justice in Belgium (or elsewhere in Europe). It will be recalled that Maurras and Daudet's paper was condemned to the papal index more than a year ago for making the Catholic religion "an instrument of political propaganda." But this action apparently did not produce the desired effect. At all events, the new edict is more drastic. It denies to all recalcitrant adherents of *l'Action française* the Catholic communion, marriage rites, and religious burial. The Royalist organ vociferously retorted that the act was a bit of "ecclesiastic terrorism" directed against its patriotic refusal to fall into M. Briand's "pacifist trap."<sup>22</sup> More disinterested observers, however, were inclined to regard it as another link in the neo-Catholic policy of openly supporting all forces

<sup>22</sup> Cf. especially the *Manchester Guardian's* account of this incident in its weekly edition of April 6, 1928.

in Europe that will tend to mitigate the effects of chauvinistic nationalism.

So far as an outside interpreter can judge, the French campaign of 1928 came to an end with less "official," or governmental, interference in the vote-getting process than is normally the case. The fact that the *union nationale* was appealing as a loose compact of divergent party groups for a popular vote of confidence in a national leader with the great prestige that Poincaré had acquired, through the success of his financial policy, militated against the old type of "official candidature." In fact, it was even charged by the conservative press that in certain districts "radical" prefects were working *against* "unionist" candidates.<sup>23</sup> One doubts, however, whether this happened in very many constituencies. For, as one prefect wrote to *Le Temps* in defense of the "political neutrality" of the office nowadays, "for twenty years the functions of the prefect have been veering more and more toward administration rather than toward politics. To-day the prefects communicate hardly at all with any central official but the minister of the interior. The other ministers correspond directly with their local representatives: chief engineers, school inspectors, finance officials, and magistrates. Thus the prefect has little effect upon the elections. But the 'governmental' candidate (where there is one) still likes to complain of the prefect's 'neutrality'; and the other candidates fear that he will not remain neutral."<sup>24</sup>

The outcome of the first day's polling, on April 22, confirmed the prevalent prediction that the "Poincarists" would win most of the seats where an absolute majority could be obtained. In consequence of the multiplicity of candidates, only 187 deputies were elected the first day, which meant that in 425, or more than two-thirds, of the electoral districts, *ballotages* would be necessary.<sup>25</sup> Among these 187 victorious candidates, nearly 150 had campaigned as unqualified supporters of Poincaré. Only fifteen Socialists were elected, and although the Communists polled over a million votes (the largest popular vote in their history as a party), they failed to win a single seat. The largest bloc of deputies chosen on this *premier tour* were the 69

<sup>23</sup> Cf. *Le Temps*, April 7, 1928.

<sup>24</sup> As reported by *Le Temps*, May 10, 1928.

<sup>25</sup> There were more *ballotages* in 1928 than in any previous election held under the single-member plurality system: in 1906, 156; in 1910, 229; and in 1914, 252. In only five *départements* (Calvados, Meuse, Orne, Corse, and Constantine) were all the seats filled on the first vote.

members of M. Louis Marin's *Fédération républicaine*, a pronouncedly conservative and nationalistic group.

In the interval between the first and second polling days, there were, as in all previous elections between 1889 and 1919, wholesale withdrawals of candidates, so that only 1,273 remained in the final voting. In all but a few of the 425 constituencies, the battle narrowed down to two or three candidates: (1) a "conservative" or "moderate" republican, representing the *union nationale*; (2) a radical-socialist or a republican-socialist or a "unified" socialist, representing an attempt to reconstitute the old *cartel des gauches* of 1924; and (3) usually a communist. Many new candidacies were, of course, declared—sixty-five in the department of the Seine alone; but nearly all the "independents" and *fantaisistes* dropped out of the contest. M. Léon Blum advised the Socialists to "desist" in favor of the candidates most likely to beat the National Union's representative, if no Socialist seemed to have an even chance to win.<sup>26</sup> The Communists, on their part, remained true to their orders from the Third International and refused to reciprocate. Otherwise, it was a week of political jockeying and compromising in the best French manner.

The second poll accentuated the gains of the center and right groups. The accompanying table shows the results of the two pollings

PARTY GROUPS	OLD CHAMBER		SEATS WON IN 1928		
	1924	Mar., 1928	ELECTIONS		
(In order from Right to Left)		(44 seats vacant)	1st day	2nd day	Total
Conservateurs-Royalistes	15	34*	7	8	15
Republicains U.R.D.	108	96	69	62	131
Démocrates (Catholiques)	14	13	8	9	17
Republicains de gauche	87	79	47	59	106
Republicains radicaux	49	32	14	41	55
Radicaux et radicaux socialistes	138	129	21	102	123
Republicains socialistes	42	38	6	41	47
Socialistes S.F.I.O.	104	92	15	86	101
Communistes B.O.P.	27	27	0	14	14
Socialistes communistes	0		0	2	2
Totals	584	540	187	424	611**

\* This number includes those members not enrolled with any party group.

\*\* The deputy from Martinique is missing from this total.

<sup>26</sup> Cf. *Le Temps*, April 26, 1928, and E. Julia, "Les Elections," *Revue Pol. et Parl.*, May 10, 1928.



in comparison with party strength in the old Chamber as elected in 1924 and as it stood at the time of its adjournment on March 17:<sup>27</sup>

Except the ultra-Conservative-Royalist group, every party to the right of the Radical-Socialists increased its strength in the Chamber, whereas all groups to the left, except the Republican-Socialists of Briand and Painlevé, suffered slight losses. M. Herriot's party as a whole lost fifteen seats, but in view of its confused and divided condition how many of its bloc of 123 deputies should be classified as thoroughgoing supporters of the *union nationale* no one could predict at the date of writing these lines (June 23). Interpretations of the extent of Poincaré's success varied. *L'Europe nouvelle*, the distinguished liberal weekly of Paris, estimated that the Government could, for the time being at least, safely count upon 330 votes, with a probability that over 400 deputies would see "legal" stabilization through.<sup>28</sup> Another penetrating analysis of the popular vote argued that since only 221 deputies had won their election with the aid of, or by making promises to, either Socialist or Communist voters, the remaining 390 might be expected to sustain M. Poincaré (or any other "good" republican) on any phase of fiscal or foreign policy.<sup>29</sup>

The relation between the popular vote polled and the number of seats gained by the larger party groups shows what glaring inequalities of representation may result from the grotesque operation of an electoral law like the present French one. "The group *U. R. D.* of M. Marin, together with the Catholic Democrats, obtained 142 seats with 1,008,244 votes; while the Communists, with a slightly larger popular vote (1,060,334) returned only 14 deputies to the Chamber. The ensemble of the right bloc, which got in 1928 almost a million votes less than in 1924, won 31 more seats, whereas under a system of P. R.,

<sup>27</sup> French party labels and classifications are so confusing and so "fluid" that it is impossible for any set of statistics to satisfy all groups or to hold for more than a given moment of time. In the above table, based largely upon the bulletin issued by the ministry of the interior on April 30, the *Démocrates* are allowed only 17 seats, but they claim 23; likewise the Radical-Socialists insisted they had 131 instead of 123. Numerous deputies freely cross the frontiers between adjacent party groups during the term for which they are elected. This tendency has already shown itself, especially among the personnel of the shifting center groups, since the elections of 1928.

<sup>28</sup> In its leading editorial, May 5, 1928. Legal stabilization at 3.93 cents was actually voted on June 24 by the overwhelming majority of 450 to 22.

<sup>29</sup> Cf. E. Julia, "Les Elections," *Revue Pol. et Parl.*, May 10, 1928.

it would have lost 71."<sup>30</sup> Between them, the two parties on the extreme left cast 2,777,546 votes, or about one-third of the total, and almost a half-million more than four years ago; but they won only a scant 18 per cent (115) of the total membership of the new Chamber.<sup>31</sup> Unless these figures lie, it would seem that the popular mandate of France in April was intended to be considerably more "liberal" than the electoral system allowed it to be. An only partially united and generally confused Left fell a victim to the very legislative act which it had forced through Parliament a year earlier against M. Poincaré's own better judgment.

However this may be, the real political complexion of the new Chamber cannot yet be determined. Perhaps, because of the looseness of party ties in the Palais-Bourbon, this will not be known until 1930, or even 1932.<sup>32</sup> (Witness the metamorphosis of the Chamber elected in 1924). A total of 307 members of the new Chamber sat in it for the first time when it convened on June 1—a turnover of 52 per cent, exceeded only once before (1919) in French parliamentary elections. Despite the fact that virtually all of its old leaders except M. Fallières (minister of labor) and M. Léon Blum (chief of the Socialist phalanx) were returned to it—despite, also, the remarkable popularity and authority of M. Poincaré—its prospective behavior was at the date of writing puzzling all the political wiseacres in the French capital.<sup>33</sup> Less than a week after the election returns were all in, Poincaré was reported as "maneuvering in the lobbies of the Chamber to get as many Conservatives as possible to transfer themselves from

<sup>30</sup> G. Lachapelle, one of the most eminent French exponents of P.R., came to these conclusions after analyzing the election results in *Vu* (Paris weekly), May 9, 1928. His allotment of seats to the *U.R.D.* and the Democrats differs by six from that given in the table presented above.

<sup>31</sup> In the eighteen districts bordering upon Paris, the discrepancies were especially glaring, as follows:

<i>Party groups</i>	<i>Popular vote</i>	<i>%</i>	<i>Number of seats</i>	<i>%</i>
Socialists	54,000	15	2	11
Communists	137,000	39	3	17
Others	163,000	46	13	72

In the entire Paris region, moreover, 47 out of 59 seats went to conservatives of one shade or another through the operation of the "plurality" system. This shows how Paris was "swept by the Right" as never before!

<sup>32</sup> Such is M. Julia's astute prediction. *Op. cit.*

<sup>33</sup> M. Loucheur was appointed to replace M. Fallières at the ministry of labor. Otherwise, the personnel of the cabinet was unchanged when, without following the customary usage of resigning, it faced the newly chosen chamber

the Right to the Center."<sup>34</sup> "The new Chamber," announced the famous radical journal, *La Parole*, "is more to the left than the preceding one. Poincaré will do well to govern with us."<sup>35</sup> This, probably is the latter's own preference, for he has already shown some embarrassment over the "coupon" election which appeared at first to have given him a legislature more "ultra-Poincarist" than he now wishes to be himself. Yet it is significant that on June 5 the Chamber re-elected as its president the popular Socialist, Ferdinand Bouisson, by a vote of 327 to 243, and chose by acclamation two weeks later another Socialist, M. Paul-Boncour, as chairman of its foreign affairs commission, and elected a Radical-Socialist, M. Louis Malvy, to head its finance commission. These are concrete indications that the new Chamber must have a kind of subconscious "leftist" complex. Once legal stabilization were voted through, it might easily so align itself as to bring into power, if and when M. Poincaré decides to retire, a left-center cabinet (or cabinets).<sup>36</sup>

Whatever the shuffling of the cards, it seems fairly clear that M. Briand's wholesome policy of Franco-Germano-European *rapprochement* will carry on.<sup>37</sup> As its natural corollary, évacuation of the Rhineland ought gradually to follow. The Alsace-Lorraine question will prove more difficult to handle, but the election of five "home rule" deputies to the Chamber in April has, at any rate, brought into the foreground of political discussion the seriousness of that administrative problem.<sup>38</sup> Economically and socially, the gigantic tasks of de-

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on June 1. The occupational distribution of the latter's membership is characteristically wider than that of the American House of Representatives. It is:

Lawyers	132	Teachers	46	Merchants	26
Landowners	67	Physicians	43	Laborers	22
Industrialists	62	Farmers and		Civil servants	21
Publicists	52	vinegrowers	40	Engineers	17
				Others	83

<sup>34</sup> Cf. *Manchester Guardian Weekly*, May 4, 1928.

<sup>35</sup> May 4, 1928.

<sup>36</sup> The man most frequently talked of as the likeliest successor to Poincaré is M. Tardieu, formerly a close collaborator with Clemenceau and now minister of public works in the National Union government.

<sup>37</sup> The victory of the Left in the May elections in Germany will doubtless strengthen Briand. But the Kellogg outlawry proposals played little part in the French campaign, though both Briand and Poincaré, the latter much chastened since the Ruhr days, sounded the note of "peace with security" in their few speeches.

<sup>38</sup> Though as yet there is no adequate understanding of the meaning of "home rule" in a centralized country like France.

veloping the nation's natural resources, reorganizing its public administrative machinery, broadening out the educational system, and checking the ominous trend toward depopulation will put to difficult test the caliber of French political leadership during the coming four years.

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**The German Elections of 1928.** The elections which were held throughout Germany on May 20, 1928, are of considerable interest and importance not only to Germany but also to the rest of the world. These elections, to be sure, did not have the dramatic interest which attended the Reichstag elections of December, 1924. But they deserve attention for a number of reasons: first, because they are the first elections to be held in the Reich under what may be called normal conditions;<sup>1</sup> second, because elections for five Landtags and several city councils were held at the same time;<sup>2</sup> and third, because the elections gave a further test, and supplied additional evidence of the operation, of the German system of proportional representation.

Despite the intensive work of the political parties, the people were not aroused to much enthusiasm during the campaign. The old Reichstag was dissolved before Easter, but not until the last week of the campaign could one detect any excitement. Never before had the electors been bombarded with so much printed matter, posters, and, last but not least, loud-speakers and films. All the modern methods of appealing to the voters were tried by the numerous political parties. There were lacking, however, the overpowering issues and the battle-cries which were so effective in 1924. Parades, demonstrations, meetings, and all the rest were carried through successfully on the whole,

<sup>1</sup> The two elections of 1924 were so near to the terrible days of the inflation, and so much concerned with the occupation of the Ruhr, separatism, and other matters incident to the war, that one could hardly expect normal results. Germany today is certainly not normal in the strict sense of the word. There are many enormous problems still to be solved, and there continue to be much suffering and distress. But, at any rate, outside dangers are remote, and the issues of the election were concerned with matters of internal importance such as are likely to be discussed for some years to come.

<sup>2</sup> The five states which held elections for the Landtags are Prussia, Bavaria, Württemberg, Anhalt, and Oldenburg. City elections were held in Breslau, Frankfurt-on-Main, and Wiesbaden, due to the recent *Eingemeindungen* which have taken place in these important cities.

but they were quite dull and uninteresting. Only the two extreme parties, the National Socialists or Hitlerites on the right, and the Communists on the left, could appear enthusiastic. Nevertheless, the lack of what the Germans call a "*grosse Parole*" and the lack of excitement are not to be deplored; their absence probably indicates progress toward social and political consolidation.

The German appears to take his election duties quite seriously. He reads the enormous quantities of "*Broschüren*" and "*Flugblätter*" which are turned out by the parties. He studies the election posters which are put up on the "*Plakatsäulen*" along the streets of German cities. He faithfully attends political meetings and listens for several hours to speeches which are packed full of meat. Perhaps the fact that most of the meetings are held in halls where refreshments may be obtained helps him to digest the heavy diet which is handed to him. In any event, at election time he goes through all the motions of being a model citizen, even though his electoral system is quite impersonal and certainly not intended to be inspiring.

The list system of P. R. which is in force in Germany requires the parties to nominate lists of candidates in the various districts, unions of districts, and finally in the Reich.<sup>3</sup> For the 1928 election the parties nominated 5,484 candidates for the district lists and 540 candidates for the Reich lists, making a total of 6,024.<sup>4</sup> There was a total of 31 political parties and a total of 646 district lists and 31 Reich lists.<sup>5</sup>

Such a plethora of parties and candidates might give one the impression that German political life is chaotic. How can any nation with 31 parties decide anything in an election? Fortunately, however, two-thirds of these so-called parties did not cut any figure, and thus the distribution of votes was not such as to prevent a clear-cut de-

<sup>3</sup> The union of lists in adjoining districts is of course optional, but as a rule such *Verbindungen* are made by the parties. A candidate may be placed on a district list and on a union list at the same time. Similarly, a candidate may be nominated for a district and also be placed on the Reich list. This was the case with Dr. Stresemann, who headed both the Reich list and the list in Ober-Bayern for the People's party.

<sup>4</sup> Inasmuch as many candidates are put on more than one list, the net total is somewhat smaller.

<sup>5</sup> This means that not every party nominated a list in each one of the 35 districts, while all had Reich lists. A party cannot have a Reich list, however, without having a district list. Number 27 of the Reich lists was declared void, leaving thirty parties in the field. In Prussia there were 18 lists, in Baden 17, and in Württemberg 16.

cision at the polls. At the most, there were ten real political parties, and the battle was actually fought by seven of them.<sup>6</sup> The remaining *Splitterparteien* "also ran," but, with the exception of four of them, did not obtain any seats in the Reichstag. The 1,320,000 votes which were given to these latter parties were entirely wasted.<sup>7</sup> In the last Reichstag there was a movement in favor of legislation which would make it difficult, if not impossible, for these little groups to enter the lists. But unfortunately nothing was done. Perhaps the result of this election will give the necessary impetus to corrective legislation.<sup>8</sup> Some of the groups putting up lists could hardly have been serious, for they made no campaign efforts and sought to build up no organization.<sup>9</sup> They merely gave proof that the old German saying, "Where there are three Germans there will be three Vereins," is still true.

The German system of P. R., with the exception of the defect just pointed out, succeeds very well in mirroring the mind of the electorate. With so many political parties, a system of proportional representation is probably necessary, and there is little reason to believe that the present parties would give up the principle of P. R. There is dissatisfaction, however, with several features of the existing system. The first and greatest objection is that the districts are so large that it is next to impossible for the candidate to be acquainted with his district, and for the district to know its candidate. To introduce the personal element, the ballot has been changed so that under the name of the party list for which the elector votes are printed the names of the first four candidates on the party list. But this change has had little or no effect. Candidates still complain of the difficulty

<sup>6</sup> These ten parties, in the order of their strength, are: Social Democrat, German National Peoples', Center, Communist, Peoples', Democrat, Business, Bavarian Peoples', Christian National Peasant, and National Socialist.

<sup>7</sup> In December, 1924, the number of votes received by the *Splitterparteien* amounted to but 710,000, or the equivalent of 11 seats. This year the votes for these parties would have produced 22 seats if given to the larger parties.

<sup>8</sup> Many states had passed legislation requiring money deposits and thousands of signatures to nominate lists, but the Supreme Court, in appeals coming to it, declared such legislation unconstitutional.

<sup>9</sup> Here are the names of some of the *Splitterparteien*: Reichspartei für Handwerk, Handel und Gewerbe; Volksblock der Inflationsgeschädigten; Unpolitische Liste der Kriegsoffer, Arbeitsinvaliden, und Unterstützungsempfänger; Aufwertungs und Aufbaupartei; Partei für Recht und Mieterschutz. This latter party received 2,164 votes. See the *Deutsche Allgemeine Zeitung*, May 9, 1928, Number 213-214, for a list of all the parties entered in the election, together with an account of the meeting of the *Reichswahlausschuss*.

of working their districts in a campaign, and of keeping in touch with the districts during the sessions of the Reichstag. The German system is much simpler than the Hare system and does not require the complicated method of counting which that system must have. But instead of voting for a candidate the German must vote for a party list, and thus the personal element in elections is lessened.

Furthermore, complaint is heard that there are no by-elections to fill vacancies in the Reichstag. Under the law, when a vacancy occurs the next person on the party list fills it. There seems to be a desire for more frequent tests of the state of public opinion in the country, and it is thought that by-elections afford this. Perhaps the value of by-elections is exaggerated; when they are not held there is a considerable saving of money.

Finally, some observers are beginning to find that the Reichstag is not getting the best possible candidates. The list system, however, has the advantage of practically assuring seats to the leaders of the parties, and also of enabling more women to be sent to the Reichstag. Strangely enough, the absolute power of the parties in the nomination of their lists is not causing criticism, although occasionally unpleasant deals are disclosed. The mechanical side of the system is handled very capably by the election officials, and there are no hitches either in the preparation for the election or in securing the exact results.

It has been remarked above that there were no outstanding issues in this election. The question of the restoration of the monarchy, for instance, was not even broached by the Nationalists. But the absence of large issues does not mean that there was a complete sterility of issues such as is usually the case in the United States. In fact, discussions raged about a number of important questions. The Nationalists, in their speeches and in their posters, advocated "more power for the Reich president." The Democrats pushed forward their proposals for the *Einheitsstaat*; while the Social Democrats emphasized "no more war." The electorate was made acquainted with the sins of omission and commission of the late government of the Right, and each voter should have been able to make up his mind how to vote.

After the tumult and the shouting, what were the results of this consultation of the electorate? Along what lines should German politics be expected to proceed during the next few years? The general result of the election was to move the balance of power in the Reichstag decidedly to the left. This was due, first, to the enormous losses of the Nationalists, and second, to the great gains made by the Social

Democrats and the Communists. In his apparent desire to record a vote of lack of confidence in the recent cabinet, the voter quite obviously jumped over the middle parties and gave his vote to the Social Democrats. These middle parties also lost many thousands of votes of their own members to the Social Democrats, and their positions were further weakened.

The great victory of the Social Democrats cannot be minimized. They increased their strength by 1,200,000 votes. Compared to this gain, the increase of the Communists of about 500,000 votes seems small, although it is not unimportant. Socialist gains were made in thirty-three of the thirty-five electoral districts. The party increased the number of its seats in the Reichstag from 131 to 152, an increase of approximately sixteen per cent. This is indeed considerable for so large and important a party. Not only do the Social Democrats remain the largest single party in Germany, but the voters have now given them nearly one-third of all the seats in the Reichstag. The Socialist gains are due to a number of causes. The split in the party in Saxony has now been effectively healed; large bodies of workingmen in the Rhineland who formerly voted for the Center party this time voted for the Social Democrats; and the party profited from its well-oiled and perfectly working organization and from the general swing to the left which the figures so clearly indicate.

How to explain the correspondingly great loss of the Nationalists is not so easy. The Nationalist press is still quite up in the air, contenting itself with saying that "May 20 was a dark day for the German people." The Nationalists lost approximately 1,800,000 votes, and 30 seats in the Reichstag. This places them in about the same position as after the elections of 1920. Their losses were general and significant. As compared with the December elections of 1924, they lost 72,000 votes in Ober-Bayern, 78,000 in Nieder-Bayern, 70,000 in Potsdam I, 41,000 in Potsdam II, 67,000 in Berlin, 74,000 in Pommern, and 79,000 in East Prussia. Even allowing for the gains recorded by a new party of the right known as the Christian National Peasants' party—a party which assimilated the old Hanoverian party and is expected to vote with the Nationalists—the losses of the party which formerly was monarchist, and which had such an influential part in the recent government, are quite overwhelming.

In the "Ruck nach links" the middle parties also sustained considerable losses. The People's party, the Center party, and the Democratic party lost six, eight, and seven seats respectively. The high



prestige of Herr Stresemann apparently saved the People's party from a greater loss.<sup>10</sup> Why the Democrats should have lost as much as the other two parties which were members of the recent Right coalition is not clear. The National Socialists, or Hitlerites, were likewise reduced in strength. They lost 100,000 votes in the whole country, and the only gains they recorded were in western Germany, either in or near the regions occupied by French and British troops.<sup>11</sup>

In addition to the Social Democrats, two parties were able to secure gains. The first of these was the Communist party. The "Reds" increased their popular vote by 500,000 and secured nine additional seats in the new Reichstag. In Berlin alone the gain was 130,000 votes for the Communists; but elsewhere in the Reich, as in Thuringia, Bavaria, Württemberg, and Mecklenburg, they lost considerably. The other party which gained was the Business party, which was able to secure six additional seats, bringing up its total to 23, just two less than the Democrats. This party has been able to take political advantage of the impoverished condition of the middle classes, and when one realizes how serious this condition is, one wonders why the party is not stronger. As long as Professor Brecht and his colleagues are in opposition, and thus not forced to fulfill their promises, they are likely to maintain, or even to increase, their strength.

The great Social Democratic victory in the Reichstag elections also extended to the elections for the five Landtags elected at the same time. In Prussia the present Weimar coalition of Social Democrats, Democrats, and Centrists will continue in power with slightly increased strength. The Prussian prime minister, Otto Braun of the Social Democratic party, is assured of his position. In Bavaria the present control of the Bavarian People's party is threatened through the large Socialist gains. In Württemberg, where the Nationalist prime minister Bazille has governed for several years, a surprising upset occurred, leaving his coalition in a minority. The next cabinet will be much more to the left. In Oldenburg the Right government parties were defeated in the election and will be succeeded by a Weimar coalition. The same story can be told of the small state of Anhalt. Even in the city elections in Frankfurt, Wiesbaden, and Breslau, the Social Democrats registered large gains and the Nationalists corresponding losses.

<sup>10</sup> Dr. Stresemann was not successful in winning a seat for his party in Bavaria, where he was entered as the *Spitzenkandidat*, but he more than doubled the vote of his party there.

<sup>11</sup> Their two greatest gains were in the Palatinate and in the Coblenz area.

It is therefore very clear that the German people wanted a government of the Left, and have repudiated the recent Right coalition. If the elections mean anything at all, they mean this. Germany, however, has not yet been able to operate her parliamentary system perfectly. The many parties have necessitated much compromising in the formation of cabinets, and the strong arm of the President has been required upon occasion to settle the bickerings attendant upon cabinet crises. Even now, as the present article is written (May 25), there is considerable uncertainty as to how a new cabinet is going to be formed.<sup>12</sup> By their smashing victory the Social Democrats are clearly entitled to the dominating position in a new cabinet of the Left. But in order to form a "grand coalition," composed of all the parties from the Social Democrats to the People's party, it is necessary to arrange a compromise between the Social Democrats and the People's party—in other words, to effect a compromise between socialism and big business, a rather difficult task to say the least. Thus although the People's party lost considerable strength in the election, it will have much to say as to whether the newly elected Reichstag will see numerous ministerial crises, or whether it will be enabled to get to work on the many problems crying for solution. Parliamentary government with numerous parties, even when the people speak clearly and have their votes accurately reflected through a good system of P.R., is indeed problematical.

The uncertainty for the future is partly due to the position taken by the Communist party. This party, with 54 seats in the new Reichstag, is nothing but a millstone around the neck of any government, be it left, right, or center. The Communists are obstructionists pure and simple and cannot be reckoned in any scheme for building a new cabinet. This means that although the new Reichstag is decidedly left, the next cabinets cannot be nearly as left as the Reichstag.

The Conservatives are already hoping for difficulties and another election. But such hopes are not well grounded. Following the practice

<sup>12</sup> The Marx ministry resigned on June 12, and President Hindenburg invited Herman Mueller to form a cabinet. He encountered unusual difficulty in securing the necessary coöperation of the Center and People's party, but succeeded June 28 in forming a ministry which consisted of four Socialists, two members of the People's party, one Centrist, two Democrats, one member of the Bavarian People's party, and one person who is a member of no party. On July 4, the Reichstag approved the program of the new government by a vote of 261 to 134, with twenty-eight deputies not voting. *Editor.*

now established, the old cabinet will remain in office until the day before the new Reichstag assembles. Before that time, President Hindenburg will consult the leader of the strongest party, namely, the Social Democrats, concerning the formation of a new cabinet. After the meetings of the various party factions following Whitsuntide, it will become clear whether a cabinet of the "grand coalition" can be formed. If, as now appears likely, such a coalition is formed, it is very probable that a Social Democrat will again become chancellor of the Reich, for the first time since 1920. Such an outcome would give effect to the clearly spoken word of the people in the great consultation of 1928.<sup>13</sup>

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<sup>13</sup> In this election 31,145,308 votes were cast as compared to 30,703,591 in December, 1924. The number of qualified voters, however, rose from 38,987,385 to 41,295,102, causing the percentage to drop from 78.8 to 75.4. The district of Baden had the poorest record, with a percentage of 61.7, while the Magdeburg district had the highest record, with a percentage of 84.4. The total number of invalid ballots amounted to 420,830. Experience has shown that a certain number of these ballots are eventually declared valid by the *Wahlprüfungsgericht*. Since the Social Democrats need but 3,836 additional votes to secure an additional seat, the action of this election court will be watched with interest. The new Reichstag will have 129 members who have not previously served in Parliament. It will also have 31 women members, of whom 19 belong to the Social Democratic party. Since the size of the Reichstag depends upon the number of votes cast, the new body will have 490 members as compared to 493 members in the old body. This is true, despite the increase in the number of votes over 1924, because of the wastage of votes on the *Splitterparteien*.

## NOTES ON INTERNATIONAL AFFAIRS

EDITED BY BRUCE WILLIAMS

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**What is the League of Nations?** On January 10, 1928, the League of Nations celebrated its eighth birthday. No longer a mere ideal, it has become, during these eight years, an effective agency for world peace. It is therefore now possible to discuss the nature of this unique organization not so much through interpretations of the Covenant as by an examination of the institution in actual existence.

Many learned treatises have been written on the nature of the League. Certain writers affirm that the League is a rudimentary superstate. But this definition seems hardly appropriate when we consider that the League is not a sovereign power. It has no army, no navy, no territory. It can levy no taxes, nor enforce their collection. In fact, the League is not a state at all, much less a superstate. Again, others would have us believe that the League is an international corporation, if there can be such a thing. While there are certain points of similarity between the League and that "artificial thing created by law" known as a corporation, there are other respects in which dissimilarity is no less pronounced. No sovereign power has given the League its charter, nor can any single government amend that instrument. Not having been created by legislation, it is not amenable to any legislative body. In fact, the League is *sui generis*; it cannot be placed under any heading such as superstate, corporation, federation, or other hitherto recognized classification. Though exhibiting some of the attributes of each of these conceptions, it essentially differs from any one of them.

It is the purpose of the writer of this article to lay before the readers of the *Review* certain instances where the special and peculiar nature of the League manifests itself. These developments will indicate what lies in the minds of those under whose guidance the evolution of the League is proceeding. They will also perhaps enable us to get a clearer idea of what the institution really is.

*Finances.* The Covenant says very little regarding the financial administration of the League. Hence the Assembly and the Council have been called upon to develop a practical system of financial administration. At every assembly a detailed budget is presented by the secretary-general. This is discussed, amended, and

finally passed. It authorizes the expenditure of a specified sum during the ensuing calendar year and the raising of a corresponding amount from the member states. Had the monies thus obtained been employed solely for the current expenses of the organization, and if no tangible assets had remained after each year's obligations had been met, the problem of League ownership of property would not have arisen. But as a result of the financial operations of the past eight years the League today possesses (a) a working capital fund, (b) a large cash surplus, and (c) real property in the form of buildings, land, etc. An examination of the manner in which these assets are held may prove valuable to our investigation.

*Working Capital Fund.* In the earlier years of the League's existence it was thought advisable to create a working capital fund in order to obviate the necessity of borrowing from the banks in anticipation of the payment of contributions. But whereas the Covenant authorizes the raising of funds "for expenses," it hardly permits the accumulation of monies to be kept on deposit. Hence the theory was advanced and accepted that working capital constitutes a *loan* on the part of the several states to the collectivity of states, and it was further declared that any state, upon withdrawal from the League, might claim reimbursement of its proportionate share. In conformity with this understanding, the treasurer of the League is required to present an annual statement showing exactly what part of the working capital stands to the credit of each state. Common ownership is non-existent, the working capital fund being merely a combination of carefully identified loaned amounts.

*Surplus Funds.* A similar situation arose in respect to surplus funds. Accurate budgeting, especially for an organization so likely to have emergency expenses, is difficult to secure. In the earlier estimates, the officials may have erred somewhat on the safe side and demanded revenue in excess of actual needs. At all events, the fact remains that from 1922 to 1925 considerable surpluses were shown at the end of each year's operations. Now the Financial Regulations provide that any such surplus shall be applied in reduction of the cost of the second next following period. Thus the surplus, if any, of 1928 will be used in the reduction of the amounts payable in 1930.

But the member states decided to forego their rights to these rebates and to place their respective shares in a League building fund. In due course the building fund, to which certain windfalls were added, reached a considerable sum, whereupon the 1926 Assembly resolved

"that there should be recorded the share in this total that belongs to each member which has contributed to it, in order that the proper refund may ultimately be made to each member state."

Subsequent decisions have carried the matter farther. The entire capital holdings of the League—buildings, lands, building fund, etc., estimated as worth approximately \$5,000,000 today—are held to be the property, not of a corporation, but of a certain number of individual states whose percentage shares have been definitely determined by a final schedule voted by the Assembly of 1926. Thus we find that the share of Great Britain in the building fund is 8.473606 per cent of whatever may be regarded as forming part of or resulting from the use of that fund, while Honduras and Nicaragua, still members of the League but never having paid any contribution, have no part in the ownership of the League's capital assets. Were the League by mutual consent to disband, there would be no quarrel over the assets, for the share of each state in the capital holdings is definitely known and the right of each state thereto clearly admitted.

*Purchase of Properties.* In the summer of 1920 the secretary-general opened negotiations with "La Société de l'Industrie des Hôtels" for the purchase of a building at Geneva known as the Hôtel Nationale. To arrive at agreement as to price and terms was not difficult, but considerable discussion arose regarding the formula to be employed in describing the purchaser. The clause which appears in the preamble to the deed of sale reads in part thus: "Sir Eric Drummond, Secretary-General of the League of Nations, living in London . . . or his representatives M. van Hamel and Sir Herbert Ames, acting in the name of the League of Nations whose seat is at Geneva, and which was established by the Peace Treaty of Versailles on June 28, 1919, being specially delegated and authorized for the purpose by the Council of the League of Nations at its meeting held in Paris on the 20 Sept. 1920, whereof extract shall remain appended to this deed, OF THE FIRST PART, etc."

Much the same designation was subsequently used in 1926 when the Barteloni and other properties were acquired as a site for the new Assembly Hall. In these documents the description reads: "sold . . . to the . . . League of Nations constituted by the Peace Treaty of Versailles of June 28, 1919." Note the formula. No attempt is made to declare what the League is. It is sufficient, after giving its name, to indicate its domicile, its origin, and the instrument of its

creation. Its special character, different from any other institution in existence, is evidenced by the formula employed.

*Relationship with the Swiss Government.* With its domicile at Geneva, the headquarters of the League, at least according to the map, are in Switzerland. In the autumn of 1926, after prolonged negotiations, an agreement was arrived at between the Swiss Federal Council and the League authorities as to the régime of diplomatic immunity of the officials of the League. The Swiss government recognizes that the League of Nations possesses "international personality and legal capacity" and cannot be sued before the Swiss courts without its express consent. The premises it occupies are inviolable; no agent of the public authority can enter them without permission. The secretary-general is entitled to use couriers for his official correspondence. Customs exemption is granted in respect of all objects for exclusive League use. No taxation can be imposed on League properties, nor on its bank assets or its securities. Officials of the upper grades, who are extraterritorial, enjoy immunity from civil and criminal jurisdiction in Switzerland, and also fiscal immunity.

Now it is to be noted that in all these stipulations the Swiss federal government regards the League in almost indentially the same light as it looks upon an embassy. The privileges and immunities accorded the League, its property, and its staff, are those given the minister representing a sovereign state and located in Switzerland. Is the institution at Geneva, then, anything more than a combination of embassies, the aggregation enjoying the same privileges and immunities as would be granted to a recognized embassy?

*The Administrative Tribunal.* After the secretariat of the League and the staff of the International Labor Office had been recruited, it was deemed advisable to define the rights and duties of the officials by means of a series of staff regulations, and there was given to each employee a written contract binding upon both parties under the regulations above mentioned. As it was inevitable that disputes should arise as between the administrative heads and members of their respective staffs, the Assembly, in December, 1920, established a right of appeal to the Council. But the exercise of this right proved very irksome, since members of the Council felt that their time at Geneva might be better employed than in hearing cases of this nature.

The Eighth Assembly, therefore, adopted a statute authorizing the establishment of a League of Nations administrative tribunal, consisting of three independent outsiders, one of whom must be a judge;

and, the Council having appointed the members, the tribunal commenced to function in January, 1928. In the Assembly document the tribunal is thus described: "The function of the proposed tribunal will be to pronounce finally on any allegation that the administration has refused to give an official treatment to which he was legally entitled, or has treated him in a manner which constitutes a violation of his legal rights, under his appointment, or of the regulations applicable to his case, or, finally, has taken in an irregular and improper manner a decision which was within its competence."<sup>1</sup>

Here again is evidence of the unique character of the League. This is probably the first time in history that an *institution* is extraterritorial and requires to create its own legal tribunal to interpret its agreements with its staff.

*What, Then, Is the League?* Space prevents pushing this inquiry farther. But have we not already enough evidence to show that in the minds of those who are active in League development the institution is not regarded as a superstate, a corporation, or a federation? Let us attempt to describe the organism as we know it today.

Fifty sovereign states have become associated for their own good and for the benefit of the world at large. Each state has signed a solemn treaty with each of the other forty-nine states (a) to limit its freedom of action in certain directions, especially in its liberty to resort to war, and (b) to coöperate in the settlement of international problems in such fields as finance, economics, transit, health, labor, and other matters susceptible of international treatment. As a necessity to the effective carrying out of these common purposes, these fifty nations have created certain machinery which they have agreed to use in the common interest. The persons employed in operating the machinery are accorded the same privileges that would be enjoyed by the representative nationals of any single state doing similar work and residing within the limits of another country. The physical instruments necessary to the functioning of this enterprise—lands, buildings, monies in bank, etc.—are the property of each of the fifty states, in the exact proportion in which their several contributions have made its acquisition possible. Any state withdrawing from the group may take out whatever it has paid in, minus such portion as has been actually used in meeting current expenses.

Or, to close with a briefer definition, the League of Nations, as we know it today, is a voluntary association of self-governing states,

<sup>1</sup> A 72, 1927, V, p. 2.



bound together by treaty to forego certain rights and employ certain methods for the preservation of the peace of the world and for coöperation in the mutual interest.

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**Turkish-American Treaty Relations.** In 1799 President Adams appointed William Smith, of South Carolina, minister to the Sublime Porte<sup>1</sup> "with full authority to negotiate a treaty of amity and commerce with Turkey."<sup>2</sup> The mission was abandoned, however, and no farther steps were taken to negotiate a treaty with Turkey until 1820. In that year the Bradish-Bainbridge mission proved fruitless, as did the English-Rogers mission, which extended from 1823 to 1826, and the Crane-Offly mission in 1828. Finally, in 1829, President Jackson commissioned Charles Rhind, David Offly (subsequently the first United States consul to Turkey), and Commodore James Biddle to negotiate a treaty with the Sublime Porte. The result of their mission was the treaty of commerce and navigation of 1830, the first treaty concluded by the United States with an Oriental state. In 1831 an American legation was opened in Constantinople with David Porter as chargé d'affaires.<sup>3</sup>

Although "a friendly treaty of commerce and navigation," the treaty of 1830 was provocative of more dispute than harmony in the subsequent relations of the two governments. The most important portion was Article IV, under which the United States government claimed extraterritorial rights for its citizens. The Sublime Porte, however, denied the interpretation placed on the article by the United States.<sup>4</sup> Other provisions of the treaty called for most-favored-nation treatment and freedom for American vessels and merchants in Turkey. A secret clause providing that vessels desired by Turkey should be purchased and built in the United States was rejected.<sup>5</sup>

In reality, the commercial relations of the two countries were based not only on the treaty of 1830, "but also on the English convention

<sup>1</sup> In diplomatic parlance the Sublime Porte meant the Imperial Ottoman Government.

<sup>2</sup> United States Department of Commerce, Trade Promotion Series No. 28. *Turkey: A Commercial and Industrial Handbook*, p. 228 (Washington, 1926).

<sup>3</sup> *Ibid.* For the text of the treaty see Malloy, *Treaties and Conventions of the United States*, Vol. I, pp. 1318-1321.

<sup>4</sup> *Foreign Relations, 1885*, pp. 890-898; 1887, pp. 1098-1107.

<sup>5</sup> *Turkey: A Commercial and Industrial Handbook*, p. 229.

of 1838, the benefits of which, by an agreement with the Sublime Porte, were extended to us in the following year".<sup>6</sup> That treaty provided most-favored-nation treatment for citizens and ships, declared that no permits should be necessary for trade with subjects of the Sultan, provided that the same import duties should be charged all nations, and finally stated that there would be no objection to other nations using the treaty as a basis of trade.<sup>7</sup>

The relations of Turkish and American traders rested upon the treaty of 1830 and the Turco-British treaty until 1862, when the United States concluded a second treaty of commerce and navigation with the Ottoman Empire based upon the old Turco-British treaty. The more important articles contained the following provisions: (1) the Turkish government accorded most-favored-nation treatment to American citizens and ships; (2) permits to trade were not to be required of Americans; (3) the Turkish government agreed to charge equal import duties in respect to all nations; (4) the eight per cent ad valorem export duty then in force was to be reduced one per cent annually to a permanent level of one per cent; (5) an import duty of eight per cent ad valorem was to be levied upon all goods, with a provision for refund if re-exported within six months; (6) a provision for the single payment of duties was inserted to avoid repetition of experiences with corrupt Turkish customs officers; (7) Americans were guaranteed equality of treatment with regard to warehousing, bounties, drawbacks, and port facilities; (8) goods shipped in either American or Ottoman vessels were to have equality of treatment; (9) there was to be no transit charge for passage through the Dardanelles or the Bosphorus; (10) the old land transit duty of three per cent was reduced to one per cent; (11) the importation of arms and ammunition into Turkey was prohibited; and (12) a tariff commission was appointed to draw up a schedule of values upon which to base ad valorem duties.<sup>8</sup>

The relations of the two governments rested upon the treaties of 1830 and 1862 until 1917, when diplomatic relations were severed. Several unsuccessful attempts had been made by Turkey to abrogate or revise the treaty of 1862. The main motive was Turkey's desire to raise her import duties from eight per cent ad valorem to twenty per

<sup>6</sup> *Foreign Relations, 1907*, Part 2, p. 1051.

<sup>7</sup> *Hertslet, Treaties and Conventions between Great Britain and Foreign Powers*, vol. V, pp. 506-510.

<sup>8</sup> *Malloy, op. cit.*, pp. 1321-1328.

cent. In 1875 Aristarchi Bey, Ottoman minister to the United States, informed the State Department that owing to the demoralized condition of Turkish finances the Ottoman government desired to free itself from the limitations placed upon import duties by that treaty and, in accordance with the terms of Article 22, had given notice on January 15, 1874, of its desire to terminate the treaty.<sup>9</sup> Secretary Fish replied that the United States government was in sympathy with the Turkish plan to recoup its finances, but called attention to the most-favored-nation clause, to which the United States expected strict adherence.<sup>10</sup> The Turks then dropped the question for a time, but they renewed their efforts in 1883, when notice again was given of their desire to terminate the treaty. The basis of a proposed new treaty was presented which would have increased Turkish import duties on American goods to twenty per cent ad valorem. Upon investigation, it was learned, however, that existing treaties with other countries could not be revised for some time, which meant that duties upon their goods would remain at eight per cent. The United States accordingly refused to accept notice of termination of the treaty, though avowing its readiness to revise the treaty if not placed at a disadvantage with other nations.<sup>11</sup>

The question of revision of the treaty was thereafter raised several times, and in 1905 the Turks set about securing revision of import duties upwards without American consent. The bulk of Turkish trade was then with Great Britain, France, and Germany, and arrangements were made quietly with those nations to scale up the import duties. They agreed only to a three per cent increase, however, instead of the proposed twelve per cent; and their consent to the increase was predicated upon Turkish compliance with certain demands. Germany insisted that a certain portion of the additional revenue be set aside to help pay the kilometric guarantee of the Bagdad railroad; the French insisted that disputes concerning the Syrian railway and the quays at Constantinople be settled in their favor; while the British demanded a concession concerning the gendarmerie in Macedonia and the settlement of certain mining claims.<sup>12</sup> Shortly before the agree-

<sup>9</sup> *Foreign Relations, 1876*, p. 591.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Foreign Relations, 1883*, p. 836; 1884, p. 566.

<sup>12</sup> *Foreign Relations, 1905*, p. 876. *Accounts and Papers, 1906*, vol. CXXXVII, Cd. 2816, pp. 57, 69, 70, 144, 145; *ibid.*, Cd. 2759, pp. 19, 33, 58, 68, 70, 74, 75, 80, 105.

ment was reached, the American ambassador, Leishman, learned of the negotiations and vigorously protested.<sup>13</sup> He took the position that since other powers were taking advantage of the situation to settle certain disputes the United States should do likewise. The State Department accordingly authorized him to demand fair treatment for American missionaries, schools, and citizens, in accordance with treaty guarantees, as prerequisites to consent to treaty revision.<sup>14</sup> After some delay, the various demands were met, American consent was given, and Turkish import duties were raised from eight per cent to eleven per cent ad valorem.<sup>15</sup>

As has been indicated, the United States government held that Article IV of the treaty of 1830 granted extraterritorial rights to its citizens resident in Turkey. The Turks, however, denied that the treaty granted such privileges to the extent claimed, basing their denial upon an erroneous translation of the treaty. According to the State Department records, there was evidence of bad faith on the part of the Ottoman government in transmitting to the United States government a translation of the treaty in Turkish which purported to be authentic but which, it later developed, differed seriously from the original treaty.<sup>16</sup> The United States based its claim to capitulatory rights, not only upon the treaty of 1830, but also upon the treaties of Paris and Berlin and upon decrees of the Sultan.<sup>17</sup> State Department records contain many accounts of Turkish violation of capitulatory rights, and the question was never satisfactorily settled, with the result that American citizens resident in Turkey were never secure in their personal and property rights.<sup>18</sup>

This situation continued until 1914, when the Turks definitely abrogated the capitulations. They had always been anxious to rid themselves of extraterritorial rights, and when they entered the World War on the side of the Central Powers the Young Turks, encouraged by the Germans, determined to throw them off. Accordingly the Turkish cabinet notified the world on September 9, 1914, that the

<sup>13</sup> *Foreign Relations, 1906*, Pt. II, p. 1413; *ibid.*, 1907, Pt. II, p. 1051.

<sup>14</sup> *Foreign Relations, 1907*, Pt. II, p. 1051.

<sup>15</sup> *Ibid.*, pp. 1052-1053.

<sup>16</sup> *Foreign Relations, 1885*, pp. 890-898.

<sup>17</sup> *Ibid.*, 1887, pp. 1098-1107.

<sup>18</sup> An outstanding case was that of the arrest and imprisonment for almost two years of Dr. Maurice Pflaum by Turkish officials in 1883. Cf. *Foreign Relations, 1883*, pp. 809-892; 1884, pp. 532-574; 1885, pp. 809-879.

capitulations would be abrogated on the following October 1.<sup>19</sup> As the date approached, foreigners in the country were naturally uneasy. Enver Pasha, minister of war, assured the American ambassador, Mr. Morgenthau, that the Turkish government had no hostile intention toward Americans. Mr. Morgenthau asked him to demonstrate his good faith by making a visit to Robert College on October 1, which would be interpreted by all the Turks as an act of patronage by one of their most powerful leaders. The visit was made in full military pomp, with the result that American citizens and schools were unmolested during the war period.<sup>20</sup>

At the Lausanne conferences the representatives of the republic of Turkey were unyielding on the question of capitulations. As a result, the treaties negotiated with the European powers, as well as that subsequently negotiated with the United States, were devoid of extra-territorial rights. In their stead, and as a compromise, the Turks agreed to a system of foreign legal advisers who should have authority to hear complaints arising from arrest or imprisonment of Americans and other foreigners.<sup>21</sup> Although this provision caused considerable opposition to the treaty, Colonel H. Woods, British commercial secretary at Constantinople, later expressed the official opinion that the abolition of the capitulations "has not resulted in dislocation of the normal flow of trade to any very great extent."<sup>22</sup>

Questions regarding the legality of American citizenship acquired by naturalization have been a constant source of friction between the governments of Turkey and the United States, with no definite settlement by treaty even to this date. The Turco-American treaty recently rejected by the Senate did not attempt to settle the long-standing problem, but simply postponed the question, as the British postponed the Mosul question, with the proviso that the United States reserves all rights of American citizens in Turkey, whether native born or naturalized. The basis of the controversy lies in the fact that the United States recognizes the right of any person to

<sup>19</sup> Great Britain, Miscellaneous No. 13 (1914), Cd. 7628, *Correspondence Respecting Events Leading to the Rupture of Relations with Turkey*.

<sup>20</sup> Ambassador Morgenthau's *Story*, p. 115.

<sup>21</sup> See Article 1 of the treaty of amity and commerce signed at Lausanne, August 6, 1913; also "Declaration of Turkish Delegation" dated July 24, 1923, in *The Treaty with Turkey*, issued by the General Committee of American Institutions and Associations in Favor of Ratification of the Treaty with Turkey.

<sup>22</sup> Great Britain, Department of Overseas Trade, *Report on the Economic and Commercial Conditions in Turkey*, April, 1925, p. 28.

change his nationality by domiciling himself in the country of his choice and complying with that country's naturalization requirements, while Turkey has steadfastly refused to recognize such a right on the part of its citizens. In short, Turkish nationality rests upon the doctrine of *jus sanguinis*, while American nationality rests upon the doctrine of *jus soli*.

The Turkish government contended that its subjects, notably Armenians, took up residence in the United States merely long enough to secure American citizenship, with no intention of remaining in this country, and thereupon returned to Turkey, where they claimed all the rights and privileges of American citizenship, including extra-territorial rights, for themselves and their children. President Cleveland openly admitted the partial validity of this contention.<sup>23</sup> With a view to preventing the practice, the Turks passed the law of 1869 which provided that only Turkish subjects who had obtained imperial consent to change their nationality could lawfully assume foreign citizenship.<sup>24</sup> All others who secured foreign citizenship were not recognized, and when they returned to Turkey for a visit or to live were liable to arrest and imprisonment. The United States, on the other hand, steadfastly adhered to its doctrine of citizenship; and the two nations came to a deadlock, with the unfortunate result that in many cases bona fide American citizens have incurred heavy personal sacrifices and financial losses through the failure of the two governments to adjudicate their differences.

Several attempts were made to negotiate a treaty of naturalization, but they always failed. In 1874 the question came nearest to being settled when a draft treaty was drawn up but was rejected by the United States Senate.<sup>25</sup> As indicated, the treaty of 1923 did not take up the perplexing and important problem, and apparently the two governments are no nearer a solution of the question today than they were in 1830.

Under the earlier laws of Turkey no foreigner could own real estate in his own name. If an American citizen desired to acquire property in Turkey he had to buy it in the name of an Ottoman subject and have the deed made out in the subject's name. The confusion to which such a system would and did lead is apparent. Under the treaty

<sup>23</sup> *Foreign Relations, 1893*, p. x.

<sup>24</sup> *Legislation Ottomane*, vol. I, p. 8, art. 5 (in *Foreign Relations, 1868-1869*, p. 2, p. 113).

<sup>25</sup> *Foreign Relations, 1887*, pp. 1109-1113; *ibid.*, 1886, p. xi, and 1889, p. 719.

of Paris of 1856 the Sultan agreed to institute certain internal reforms, among which was included the question of foreigners holding real property.<sup>26</sup> It was not until 1867, however, after strong diplomatic pressure had been applied that the Turkish government passed a law granting foreigners the right to hold real property.<sup>27</sup> The step was an important one, but far from satisfactory, for the law was so worded that it practically made Turkish subjects of such foreigners as did acquire real property. It also provided that the various foreign governments must accede to the law before their nationals could avail themselves of its provisions. The law was not acted upon in the United States for several years, and the situation of our citizens in Turkey desiring to hold property became so acute that something had to be done. In 1871 Minister Brown advised the State Department to accept the protocol covering the Turkish law, saying that Turkey would not recognize the right of foreigners to hold property in a general treaty. He also pointed out that Turkey did not expect a reciprocal law, that the application of the proposed law would not be severe, and that, on the whole, it was about the best that could be expected.<sup>28</sup> This last argument was quite generally advanced in favor of ratification of the Turco-American treaty of 1923. After considering the question three years, a protocol was issued by President Grant on October 29, 1874, accepting for the citizens of the United States the law of the Ottoman Empire conceding the right of foreigners to possess real property in Turkey.<sup>29</sup>

Acceptance of the protocol did not, however, eliminate the troubles experienced by Americans in acquiring and holding or transferring property. By the levy of a tax upon property held by foreigners,<sup>30</sup> by refusal of the right of certain foreigners to transfer property,<sup>31</sup> and by restriction of the uses to which property could be put,<sup>32</sup> the rights of foreigners were seriously curtailed. In 1905 Ambassador Leishman summarized the whole question of the right of foreigners to hold real property as follows. (1) Unless specially authorized by imperial iradé, corporations cannot acquire or hold real property in Turkey. Directors often purchase the property in their own name

<sup>26</sup> *Foreign relations, 1863*, pt. 2, p. 1183.

<sup>27</sup> *Ibid.*, 1867, pt. 2, p. 5.

<sup>28</sup> *Ibid.*, 1872, p. 656.

<sup>29</sup> *Ibid.*, 1874, pp. xxiii-xxv.

<sup>30</sup> *Ibid.*, 1881, p. 1176.

<sup>31</sup> *Ibid.*, 1883, p. 810.

<sup>32</sup> *Ibid.*, 1891, p. 750.

giving deeds of trust to the corporation, declaring that they hold the property for it. (2) American citizens, native born or naturalized before 1869, may acquire and hold real property in Turkey. (3) Citizens of Ottoman origin who have been naturalized without imperial consent since 1869, or their children, are not authorized, as foreign citizens, to hold property in Turkey, as the government does not recognize their naturalization. By admitting their Ottoman citizenship, they may acquire property. (4) In matters relative to the tenure of real property in Turkey foreign citizens are assimilated to Ottoman subjects and the Ottoman law applied to all. In these matters foreigners cannot take advantage of the capitulations.<sup>33</sup>

An extradition treaty, containing the customary provisions, was concluded between Turkey and the United States in 1874 and proclaimed on May 26, 1875.<sup>34</sup> Upon its first test, however, the Sublime Porte refused to extradite a Turk who had fled from New Jersey, claiming that the treaties of naturalization and extradition were so tied up together that when the former failed of ratification the latter also was nullified.<sup>35</sup>

Thus, up to 1914 the relations of Turkey and the United States were based upon (1) the treaty of commerce and navigation of 1830, (2) the treaty of commerce and navigation of 1862, (3) a treaty of extradition signed in 1874, and (4) a protocol of 1874 accepting the Turkish law of 1867 which granted foreigners the right to hold real estate.

In 1914 the capitulations were abrogated by Turkey, then under the control of the Committee of Union and Progress. In 1917 the Turkish government severed diplomatic relations with the United States and definitely announced that all treaty relations were annulled.<sup>36</sup> The United States government protested the power of Turkey to annul the treaties and then withdrew its representatives, leaving American interests in the hands of the representatives of the government of Sweden.

A year and a half after the signing of the armistice, the Allies imposed the treaty of Sèvres upon Turkey, restoring, as nearly as pos-

<sup>33</sup> *Foreign Relations, 1905*, p. 880 et seq.

<sup>34</sup> Malloy, op. cit., pp. 1341-1344.

<sup>35</sup> *Foreign Relations, 1909*, pp. 596-603.

<sup>36</sup> United States Department of State, *Declarations of War and Severance of Diplomatic Relations* (Washington, 1919), p. 96.



sible, the *status quo ante bellum*.<sup>37</sup> In the meantime, the Turkish Nationalist movement had gained ground, and the treaty of Sèvres was rejected by the Turks. The Greeks, being the only ones willing to attempt to enforce the treaty by military means, were repulsed, and the armistice of Mudros was signed. The next step was the first Lausanne Conference, which broke down, and was followed by the second Lausanne Conference, which resulted in the Turco-Allied treaty of 1923, the terms of which were much more favorable to Turkey.<sup>38</sup>

The United States government sent unofficial representatives to the Lausanne conferences, but was not a party to the Turco-Allied treaty, since it had never declared war on Turkey. After the Allied treaty was concluded, the Turkish and American representatives negotiated the Turco-American treaty of Lausanne, which was signed on August 6, 1923. A brief comparison of that treaty with previous conventions reveals the following points. (1) The capitulations were definitely abrogated. In their place Turkey agreed to a system of legal advisers for the protection of American interests, but with Turkish sovereignty definitely established. (2) The right to own movable property was granted freely to Americans, reciprocally. The right to own immovable property was granted, subject to reciprocity and the local laws governing such rights of foreigners. Corporations were subjected to the same provisions. Americans were to be free to engage "in every kind of profession, industry, or commerce not forbidden by local laws to all foreigners." The full meaning of this provision is dependent upon the nature of treaties to be concluded between Turkey and the Allied Powers, separately.<sup>39</sup> (3) Most-favored-nation treatment was accorded to United States nationals in respect to freedom of commerce and navigation, import and export duties, consumption and excise taxes, transit duties, drawbacks, and protection of patent and trademark rights.<sup>40</sup> (4) The failure to mention the long-standing question of naturalization was a fundamental weakness of the treaty. Articles 3, 5, 6, 7, 8, and 29 dealt specifically with the rights of nationals of both countries, but

<sup>37</sup> Cf. *Accounts and Papers, 1920*, Vol. LI, *Treaty of Sèvres*, Cmd. 964, pp. 1-99.

<sup>38</sup> "The Lausanne Conference on Near Eastern Affairs, Records of Proceedings," *Accounts and Papers*, vol. XXVI, Turkey, No. 1 (1923). Cmd. 1814.

<sup>39</sup> Cf. Art. 3 of the treaty.

<sup>40</sup> Cf. Arts. 11-16 of the treaty.

the question would at once arise as to whether a given individual was a Turkish or an American national. Heretofore a Turkish subject legally naturalized in the United States was considered an American citizen by the United States government, but was also considered a Turkish subject by the Turkish government, subject to Turkish law. If such an individual were to return to Turkey following ratification of the proposed treaty, it is not clear whether he would be considered a Turkish citizen subject to Turkish law or whether he would be considered an American citizen subject to the provisions of the treaty.

On the one hand, a storm of protest greeted the Turco-American treaty, while on the other hand important interests favored it. Much literature was circulated in the course of attempts to bring about rejection or acceptance. In general, the religious element and the Armenian sympathizers in the United States were opposed to ratification, while business interests here and in Turkey, as well as religious interests in Turkey, were in favor of the treaty. Ratification of the treaty became to some extent a political issue in 1924, when the Democratic party inserted a plank in its platform calling for rejection.

Through the most-favored-nation clause, the United States was to receive the benefit of the tariff provisions of the Lausanne treaties. The Turkish government had instituted a maximum and minimum tariff system under which the maximum rates, which were as much as sixty per cent higher than the minimum rates, automatically applied to imports from every country not having a treaty with Turkey.<sup>41</sup> Inasmuch as the Lausanne treaties stipulated the application of minimum rates to imports from signatory countries, the same rates were to be applicable to imports from the United States, under the most-favored-nation clause, upon American ratification of the treaty with Turkey. When the time limit for ratification expired, the operation of the maximum rates upon American imports was averted by the negotiation of a *modus vivendi* which extended the time limit to February, 1926.<sup>42</sup>

In 1926, the treaty not having been ratified by the United States, the time limit was further extended to February, 1927.<sup>43</sup> On January

<sup>41</sup> United States Department of Commerce, *Commerce Reports*, January 18, 1926, p. 165.

<sup>42</sup> *Ibid.*, May 25, 1925, p. 489.

<sup>43</sup> *Ibid.*, August 2, 1926, p. 304.

18, 1927, however, the Senate of the United States finally rejected the treaty. That action placed American interests in Turkey in such a plight that the State Department negotiated a new *modus vivendi* on February 2 following.<sup>44</sup>

Under the terms of this last arrangement, the governments of the two countries agreed to establish diplomatic and consular relations, based upon principles of international law. The essential provision of the rejected Turco-American treaty and its annexes constitute the basis for treatment, reciprocally, of Turkish nationals in the United States and of American citizens in Turkey. The provisions of the previous *modus vivendi* governing Turkish-American commercial relations are extended for a period of one year, dating from February 20, 1927. At the end of that time, the arrangement was to be automatically continued for a period of three months, unless in the meantime a treaty should have been negotiated or either party should have asked for a reconsideration of its provisions.

In June, 1927, Joseph C. Grew was appointed United States ambassador to Turkey. He arrived at his post and assumed his duties on September 18; and on December 5, President Coolidge accepted the credentials of Ahmed Mouhtar Bey as ambassador of the Angora government. Thus, after a breach of ten years, Turkish-American diplomatic relations have been resumed. No treaty, however, regulating the relations of the two governments is as yet in force.

LELAND J. GORDON.

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<sup>44</sup> *Levant Trade Review*, March, 1927, pp. 91-93.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

The twenty-fourth annual meeting of the American Political Science Association will be held at Chicago, December 27-29. The headquarters will be at the Stevens Hotel, and all sessions will take place there. The American Economic Association and various other organizations will be meeting in the same hotel on the same days. The program committee (Professor S. Gale Lowrie, University of Cincinnati, chairman) is planning a more extended series of round tables than at the Washington meeting of last year, and there will be the customary luncheon discussions and general sessions. Full announcement will be made in the November issue of the *Review*. Professor Kenneth Colegrove, of Northwestern University, is chairman of the committee on local arrangements.

Professor Walter J. Shepard, of the Brookings Graduate School, Washington, D. C., has accepted an appointment as dean of the college of liberal arts at Ohio State University.

Professor N. Dwight Harris has resigned the headship of the department of political science at Northwestern University, which he has held since 1915, and has been succeeded by Professor A. R. Hatton.

Dr. Leo S. Rowe, director-general of the Pan American Union, attended the Sixth International Conference of American States held at Havana, January 16 to February 20, as a member of the delegation of the United States.

Dr. Charles A. Beard, who spent a portion of the past year making a survey of the government of Yugoslavia, under the auspices of the America-Yugoslav Society and the National Institute of Public Administration, returned early in May. His report will be published by the Macmillan Company.

Professor Clyde L. King, of the University of Pennsylvania has been in Europe in recent weeks as a delegate to the World Dairy Congress.

Professor Clarence A. Berdahl, of the University of Illinois, gave courses on political parties, the police power, and international

organization at the University of Colorado during the first half of the summer quarter.

Professor Charles Fairman, of Pomona College, has been made instructor and tutor in government at Harvard University. Professor Edward M. Sait will join the staff at Pomona the coming year.

Professor Raymond G. Gettell, of the University of California, will spend the second semester of next year in Europe, studying present tendencies in political theory in England, Germany, Italy, and Russia.

Professor Charles G. Haines, of the University of California at Los Angeles, will be on leave during the first semester of 1928-29. He expects to devote his time to investigations in the field of judicial review of legislation.

Drs. Raymond Moley and Schuyler C. Wallace, of Columbia University, have been promoted to professor of public law and assistant professor of government, respectively.

Professor Orren C. Hormell, of Bowdoin College, conducted two graduate courses in political science in the summer session of the University of Michigan.

Mr. C. Walter Young has accepted an instructorship in political science at George Washington University, where he will develop courses on the Far East and international relations. During the past three years, Mr. Young has held the Willard Straight fellowship in the Far East.

Mr. Bruce Smith, of the National Institute of Public Administration, has delivered his report on rural police protection in Illinois to the Illinois Association for Criminal Justice. It will be published as part of a report of the Association covering all aspects of the administration of criminal justice in the state.

Dr. H. W. Dodds has resigned the secretaryship of the National Municipal League in order to devote more of his time to the editorship of the *National Municipal Review* and of the League's monograph series. His successor as secretary is Mr. Russell Forbes, since 1926 director of the Municipal Administration Service.

Mr. Andrew J. Russell, formerly Woolsey scholar at Yale University and instructor in government at Berea College, has been made professor of public law at the University of Louisville.

Dr. Frank W. Prescott, of Tulane University, has been appointed Adolph S. Ochs professor and head of the department of government at the University of Chattanooga.

Under the direction of Professor Herbert Heaton, a "seven-capitals European political science tour" has been organized at the University of Minnesota. Two courses regularly offered in the department of political science are being given in connection with the "laboratory" experiences of the tour.

Professor Ralph S. Boots, of the University of Pittsburgh, gave courses on international relations and European government in the summer session at the University of Nebraska, and Professor Elmer D. Graper, of the same institution, taught European government and American political parties at Northwestern University.

Professor Robert E. Cushman has been appointed to the Goldwin Smith professorship of government at Cornell University. Mr. George E. G. Catlin has been promoted to a full professorship in the same institution. By special arrangement, he is to be in residence only during the second semester of each year. The first semester he will spend in England, where he is attached to the editorial staff of the *Yorkshire Post* and is also carrying forward a research project.

Dr. Otto Graf zu Stolberg Wernigerode, who is in the United States collecting material in the archives of the Department of State at Washington, delivered a lecture at Northwestern University on July 18 on the subject of "Bismarck and his American Friends."

Dr. Cortez A. M. Ewing, of Pennsylvania State College, and Mr. J. W. Errant, of the University of Chicago, have accepted assistant professorships of political science at the University of Oklahoma.

Dr. Frank Paddock, of Ohio State University, has been appointed assistant professor of political science at Temple University, Philadelphia.

Professors John Alley and Harry Barth, of the University of Oklahoma, will be on leave during part or all of the next academic year.

Mr. J. Mark Jacobson, who has completed his residence requirements for the doctorate at Brown University, has been made an instructor in political science at the University of Wisconsin.

Dr. C. W. Fornoff has been added to the instructional force in history and political science at the University of Arkansas and will enter upon his duties in September. He has been on the staff at the University of Illinois.

Mr. John J. George, instructor in political science at the University of Michigan, received the doctor's degree from that institution in June and has been appointed professor of history and government at Converse College, Spartanburg, S.C.

Professors Walter Thompson and Waldo Schumacher, of the University of Oklahoma, have accepted positions in Stanford University and the University of Oregon, respectively.

Mr. Francis G. Wilson, of Stanford University, has been appointed assistant professor at the University of Washington. He will have charge of the work in political theory during the continued absence of Professor W. H. George, who will remain at the University of Hawaii until the middle of the next academic year.

Mr. W. V. Holloway, graduate student at the University of Wisconsin, has been appointed instructor in political science at the University of Alabama.

Professor Albert R. Ellingwood, of Northwestern University, gave courses on constitutional law and international law at the University of Southern California during the summer session.

Mr. Edward M. Burns, formerly a graduate assistant in political science at the University of Pittsburgh, has accepted an instructorship in political science and history at Rutgers University.

Professor Harwood L. Childs, formerly of William and Mary College, has become assistant professor of political science at Bucknell College.

Professor Leonard D. White, of the University of Chicago, is spending the summer in London, where he is concluding the field work for his study of war and post-war British civil service. Professors Jerome G. Kerwin and Fred L. Schuman are also in Europe. The former is studying urban regions and also visiting the Irish Free State; the latter is in Russia.

Mr. Robert F. Stedman, of the University of Chicago, has been appointed instructor in political science at Akron University; Mr.

Samuel J. Hocking has been made extension professor of political science at the University of Alabama; and Miss Grace Givin has accepted an instructorship at Buena Vista College.

Dr. William C. Dennis, corresponding secretary of the American Society of International Law, is to give instruction in international law at the American University, Washington, D. C., beginning in October.

The department of government at the University of Texas announces the promotion of Mr. Charles A. Timm to an associate professorship and of Mr. Roscoe C. Martin to an adjunct professorship. Mr. Martin has been doing graduate work at the University of Chicago.

Dr. Irvin Stewart resigned as assistant solicitor of the Department of State to become associate professor of government at the University of Texas, beginning with the second semester, 1927-28. Professor Stewart delivered two lectures at the Los Angeles Institute of Public Affairs in July, after which he went to Duke University to teach during the second term of the summer session. Dr. R. R. Wilson, associate professor of political science at Duke University, gave a course in international law during the second term of the summer session at the University of Texas.

Professor Karl F. Geiser, of Oberlin College, will spend the coming academic year in Europe, where he plans to complete a book dealing with the political thought and life of modern Germany. He expects, among other things, to make a first-hand study of German local government. Professor Geiser's substitute at Oberlin will be Dr. Herbert W. Briggs, formerly of the Johns Hopkins University and more recently on the staff of the Foreign Policy Association.

At the University of California at Los Angeles Mr. C. A. Dykstra, lecturer in municipal government, has been appointed to a professorship of political science. Dr. Malbone W. Graham, Jr., has been raised to the rank of associate professor, and Dr. Marshall Dimock, of the Johns Hopkins University, has been appointed instructor.

The School of Government at George Washington University will open on September 19. Two courses will be offered: a general course for men and women who wish to prepare for public service, and a more specialized course for those who want to prepare for the foreign service.



Under the auspices of the Cooper Foundation, A. D. Lindsay, master of Balliol College, Oxford University, is to deliver a course of four or five lectures at Swarthmore College near the middle of the coming academic year.

Mr. W. P. Maddox, assistant professor of political science in the University of Oregon, has resigned in order to become acting associate professor of political science in the University of Virginia. He entered upon his new duties in the summer session.

Among speakers at the institute of public affairs and international relations held at the University of Georgia, July 9-24, were Professor James W. Garner, of the University of Illinois, whose lectures dealt with the office of president of the United States; Count Carlo Sforza, who discussed problems of European peace; and Mr. A. T. Polyzoides, who discussed present conditions in Europe.

Mr. G. Kenneth Reiblich received his doctorate at the Johns Hopkins University in June and is to be instructor in political science at New York University. Among other men receiving their degrees at Johns Hopkins at the same time are Mr. E. Pendleton Herring, who will be tutor and instructor in government at Harvard University; Mr. Leslie B. Tribolet, who has accepted an assistant professorship of political science at the University of Florida; and Mr. Frederick S. Dunn, now a research associate with the Council for Research in the Social Sciences at Columbia University.

Dr. Allan F. Saunders, of the University of Wisconsin, will join the staff of the political science department of the University of Minnesota as assistant professor in the fall. He will give courses on the elements of political science, American political ideas, and comparative federal government. Mr. O. P. Field, formerly assistant professor of political science at the University of Indiana, and more recently a graduate student in law at Yale University, will join the staff as an associate professor and will have charge of courses in public law. Dr. Lennox A. Mills, lecturer in the department during the winter and spring quarters, becomes assistant professor, his work being in the fields of world politics, colonization, and the government of the British Empire.

The following appointments in political science have been made to the staff of the School of Citizenship and Public Affairs at Syracuse

University for the year 1928-29: Dr. Karl C. Leebrick, on leave of absence from the University of Hawaii, professor of international affairs; Dr. Herman K. Beyle, formerly of the University of Minnesota, professor of political science; Dr. Ernest S. Griffith, University of Liverpool, associate professor of political science; and Dr. Charles H. Hyneman, University of Illinois, and Mr. A. Blair Knapp, graduate student at Syracuse University, instructors in political science. Professor Ralph E. Himstead has received a research fellowship from the Harvard Law School and will be on leave of absence for one year. Appointments in political science for the current summer session include Drs. Schuyler C. Wallace and P. H. Odegard, of Columbia University.

In view of general lack of agreement as to the meaning of the term "citizenship," a series of special addresses has been arranged by the School of Citizenship and Public Affairs at Syracuse University, each being devoted to a discussion of the social implications of a particular calling or profession, and given by an outstanding speaker selected from the field discussed. Speakers who have thus far appeared are Bishop Francis J. McConnell, of the Methodist Episcopal Church; Dean Roscoe Pound, of the Harvard Law School; Senator W. E. Borah; Dr. George Crile, surgeon of Cleveland, Ohio; Dr. Charles A. Beard; Dr. T. V. Smith, of the University of Chicago; Mr. Morris L. Cooke, consulting engineer of Philadelphia; William Green, of the American Federation of Labor; and Justice Harlan Stone of the U. S. Supreme Court. It is planned to conclude the series in the early fall by two more lectures, one to be given by a representative manufacturer and the other by a financier.

Several members of the staff of the Syracuse School of Citizenship and Public Affairs are engaged in a joint research project dealing with the water-power problem in New York State. The problem is being analyzed from the following viewpoints: engineering, economic, accounting, sociological and social psychological, and administrative and legal. The staff has been augmented by an engineer, Mr. J. B. Reid of New York; an economist specializing in public utilities, Dr. Ralph L. Dewey, of Ohio State University; and a consulting accountant, Mr. Adrian Landman of New York. The introduction to the report, in which the history of the water-power situation has been analyzed to date, was written by Mr. A. Blair Knapp. It is being published in advance of the full report.

The Social Science Research Council's committee on research fellowships has been reorganized and is now composed as follows: Professors A. M. Schlesinger, of Harvard University (chairman); Robert C. Brooks, of Swarthmore College; F. Stuart Chapin, of the University of Minnesota; V. A. C. Henmon, of the University of Wisconsin; and Wesley C. Mitchell, of Columbia University. Dr. John V. Van Sickle, assistant professor of economics in the University of Michigan, has joined the staff of the Council as fellowship secretary.

The annual summer conference of the Social Science Research Council will be held at Hanover, New Hampshire, from August 18 to September 1. In order to concentrate the work of the Conference, the plan is being tried this year of having most of the advisory committees meet before August. The only committees scheduled to meet during the Hanover session are those on corporate relations, population, interracial relations, and scientific method in the social sciences. Further concentration is evidenced by the plan to have the evening discussions center around the research problems and opportunities with which the Council and its various committees are primarily concerned.

Harris political science prizes, offered annually to undergraduates of colleges and universities in certain Middle Western states for essays on designated subjects, were awarded in May as follows: first prize (\$150) to Mr. Israel M. Labovitz, University of Minnesota, for an essay on "The Powers and Methods of Urban Utility Regulation in Minnesota;" second prize (\$100) to Mr. Orval Henry Austin, State University of Iowa, for an essay on "Rule-Making: Legislative versus Judicial;" and honorable mention to Mr. Dexter Munson, University of Wisconsin, for an essay on "The Evolution of the Federal Trade Commission." Information concerning this contest, including the list of subjects that may be written upon in 1929, may be obtained from Professor Kenneth Colegrove, 105 Harris Hall, Northwestern University, Evanston, Ill.

The recently organized National Committee on Municipal Standards held its first meeting at New York on May 21. The members are: Louis Brownlow, Charles E. Merriam, and R. W. Rigsby, of the International City Managers' Association; Charles A. Beard, A. E. Buck, and H. M. Waite, representing the National Municipal League; and C. E. Ridley, Henry P. Seidemann, and Lent D. Upson, of the

Governmental Research Association. The work of the committee is to be directed toward the development of standards of measurement which may be used as a basis for evaluating the services and results of municipal government. Mr. H. M. Waite, of Cincinnati, was made chairman, and Mr. C. E. Ridley will act as secretary, with headquarters at 261 Broadway, New York City.

The ninth annual meeting of the Southwestern Political and Social Science Association was held at Baton Rouge, April 20 and 21, in conjunction with the Louisiana State Conference for Social Betterment and the Southwestern International Relations Clubs. The program consisted of sectional meetings of the following divisions: agricultural economics, business administration, government, history, sociology, and economics. Visitors at the meeting included Professor Manley O. Hudson, of Harvard University, and Mr. Raymond T. Rich, general secretary of the World Peace Foundation. Dr. H. Y. Benedict, president of the University of Texas, was elected president of the Association for the ensuing year.

As the result of an arrangement formulated by Dr. Leó S. Rowe and the directors of the American Academy of Political and Social Science, a Los Angeles center of the Academy was formed at a meeting of the local members of the Academy held at the University Club in Los Angeles on May 4. The officers of the Los Angeles center are Charles G. Haines, chairman, and Ordean Rockey, secretary-treasurer. A committee on permanent organization consists of Professors C. A. Dykstra (chairman), and Gordon S. Watkins, of the University of California at Los Angeles; Professor Roy Malcomb, of the University of Southern California; Judge Frank G. Finlayson, of Los Angeles; Mr. W. J. Ford, of Los Angeles; Mr. Raphael Herman, of Beverly Hills; and Mrs. Robert J. Burdette, of Pasadena. The first regular meeting of the Center was held jointly with the Los Angeles Institute of Public Affairs, July 9-13, at the University of California at Los Angeles. Arrangements are being made for two or three regular sessions each year, and for the publication of the proceedings of such sessions.

The fifth session of the Geneva School of International Studies opened on July 9, and some phases of its work will continue to the end of the September session of the League Assembly. Professor Alfred Zimmern is, as usual, the director, and the lecturers represent

many different countries. Americans listed to appear on the program include Professors Bernadotte E. Schmitt, of the University of Chicago; Julian Park, of the University of Buffalo; William E. Hocking, of Harvard University; Samuel M. Lindsay, of Columbia University; Robert J. Kerner, of the University of California; Earle B. Babcock, of New York University; and Dr. Stephen P. Duggan, of the Institute of International Education.

The sixth Commonwealth Conference, held under the auspices of the State University of Iowa, took place at Iowa City on June 9-11. Attention centered on the outstanding issues of the current presidential campaign, the topics for five successive round-table discussions being Agricultural Relief, The Government and Business, The Federal Government and the States, The Eighteenth Amendment, and Foreign Policies. There were several brief addresses in the evenings. The regular summer meeting of the Executive Council of the American Political Science Association and Board of Editors of the *American Political Science Review* was held in conjunction with the Conference. The Association's committee on policy also held a meeting.

The eighth annual session of the Institute of Politics at Williamstown runs from August 2 to 30. Round-tables and their leaders are as follows: The Problems of the Pacific, Professor George H. Blakeslee, Clark University; Protection of Citizens Abroad, Professor Edwin M. Borchard, Yale University; Inter-American Trade and Commerce, Professor Harry T. Collings, University of Pennsylvania; Agriculture and the Agricultural Surplus: An International Approach, Professor C. R. Fay, University of Toronto; The Caribbean Area, Professor Charles W. Hackett, University of Texas; Modern Turkey and Its Problems, Halide Edib Hanum, of London; Population Around the Pacific Rim, Professor R. D. McKenzie, University of Washington; Social Readjustment through Voluntary Control, Professor Graham Wallas, London School of Economics and Political Science. The lecture courses are: Modern Turkey and Its Problems, Halide Edib Hanum; Germany's Foreign and Domestic Policies, Dr. Otto Hoetzsch, of Berlin; Current Political Problems in Belgium, Dr. Louis Pierard, of Brussels; and Social Readjustment through Voluntary Control, Professor Graham Wallas. A general conference on problems of Africa will be conducted by Dr. Raymond L. Buell, of the Foreign Policy Association, during the closing days of the session.

The second session of the Institute of Public Affairs at the University of Virginia extends through the period August 6-18. As last year,

the subjects for discussion relate to the national, state, and local governmental problems and policies of the United States. The program calls for daily public addresses, a daily "open forum," and an extensive series of round-tables, with subjects and leaders as follows: The Agricultural Problem, Professor John D. Black, Harvard University; Women in Public Affairs, President Aurelia H. Reinhardt, Mills College; Our Latin-American Relations, Professor John H. Latané, Johns Hopkins University; Municipal Management, Professor Thomas H. Reed, University of Michigan; County and State Government, Professor Kirk H. Porter, State University of Iowa; Political Parties, Professor A. R. Hatton, Northwestern University; The Tax Problem, Hon. Mark Graves, tax commissioner of the state of New York; The Press in Public Affairs, Dr. Victor Rosewater; Economic and Industrial Development of the South, President Bradford Knapp, Alabama Agricultural and Mechanical College; and Arbitration of Commercial Disputes, Dr. W. A. Sturges, Yale University Law School.

**The Resignation of President and Vice-President.** In his interesting book of reminiscences entitled *As I Knew Them*, Henry L. Stoddard makes the following statement: "Of the four causes of vacancy in the presidency listed in the Constitution, only two are definitely operative. Death, of course, is an obvious fact and the vice-president automatically succeeds; so would be removal by impeachment. But to whom would a president resign? Would he merely walk out of the White House, and notify the vice-president? Law provides for the resignation of every other officer except the president and vice-president. Of course, resignation is a remote contingency, but since it is mentioned, a way to resign ought to be definitely provided. I know that Vice-President Fairbanks was anxious to leave Washington on account of his wife's health. He attributed her death to the exactions of her social duties; he would gladly have resigned if he had had any precedents" (p. 546).

Vice-President Fairbanks had both precedent and legal sanction for his contemplated resignation. On December 28, 1832, John C. Calhoun wrote a letter to Secretary of State Edward Livingston (addressing him mistakenly as "H" Livingston), in which he informed him that, "Having concluded to accept of a seat in the Senate to which I have been elected by the legislature of this state [South Carolina], I herewith resign the office of vice-president of the United States."

The late Gaillard Hunt, in his life of Calhoun, says that Calhoun addressed the secretary of state "because that officer receives the returns of the votes of electors for president and vice-president and transmits them to the president of the Senate and the speaker of the House" (p. 159). Mr. Hunt here fell into a partial error. The Constitution stipulates that the votes of the electors shall be "directed to the president of the Senate." The law of March 1, 1792, relative to the election of president and vice-president, provides that "in case there shall be no president of the Senate at the seat of government on the arrival of the persons entrusted with the lists of the votes of the electors, then such persons shall deliver the lists of votes in their custody into the office of the secretary of state, to be safely kept and delivered over, as soon as may be, to the president of the Senate."

It would be the exception, therefore, rather than the rule for the secretary of state to receive the returns of the electoral votes. Not only that, but Section 11 of this same act of March 1, 1792, specifically enacts, "That the only evidence of a refusal to accept, or of a resignation of the office of president or vice-president, shall be an instrument in writing declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the secretary of state". (Revised Statutes, Sec. 151). Calhoun undoubtedly was aware of this provision and acted accordingly. No other official action with respect to his resignation appears to have been taken. The Senate had met on December 3, 1832, and, in Calhoun's absence, had elected Hugh L. White of Tennessee president *pro tempore*. When Calhoun presented his credentials as senator he was sworn in in the usual manner.

Since this section of the act of March 1, 1792, has never been repealed, it is to be presumed that any president or vice-president could resign in the manner there provided. To date, Calhoun is the only one who has done so.

*University of Michigan.*

EVERETT S. BROWN.

**County Consolidation in Tennessee.** In an attempt to reduce the cost of government in Tennessee, Mr. T. R. Preston, chairman of the state tax commission recently appointed by the governor, and Mr. A. L. Childress, state tax superintendent, have suggested a reduction in the number of counties. This idea was probably prompted by the startling fact that county government in Tennessee costs nineteen times the amount spent for state government. Governor A. E. Smith,

of New York, it will be recalled, recently suggested a similar reduction in the number of New York counties, with the same idea of economy in mind.

There are two methods by which the desired reduction in the number of counties, and thus the cost of government, can be realized: first, the natural absorption of a small county, or of several small counties, by a large county, and second, the more artificial method of consolidation of all counties into a smaller number of units by legislation or constitutional amendment. Both plans either are being worked out or have been suggested for Tennessee. It is altogether logical that such a movement should start in Tennessee. This state has inherited the English county in as pure form as any commonwealth which can trace its institutional origins directly or indirectly to the mother country, yet the state's administration today is a notable example of what can be done in state administrative reorganization.

In 1919 two counties consolidated; in 1927 the county courts of two counties agreed to a consolidation, and a measure requesting permission to consolidate will be presented to the next legislature; and two state officers have presented a plan for redistricting the state, reducing the number of counties from ninety-five to less than fifty. To some observers these are startling facts. At all events, they show that some attempt is being made to explore the "dark continent of American politics."

In 1919 Hamilton county, with Chattanooga as the county seat, absorbed James county, the legislature granting its permission upon the request of the latter and the acquiescence of the former. This absorption of a small county by a larger county has proved successful. The tax-rate in James county has been cut in half, and at the same time improved roads have increased from less than five to over forty-five miles, and schools are now in session eight and nine months as compared with four months during the year before the consolidation. In general, the county is in a much better condition than ever before.

Because of this successful experiment, Meigs county, which borders Hamilton on the north, held a joint court meeting with Hamilton last year, and it was agreed that the two counties should sponsor a bill in the next legislature to allow Hamilton county to absorb Meigs. The tax rate in Meigs county now is \$4.00, while in Hamilton it is \$1.40.



With the same idea of tax reduction in mind, Mr. A. P. Childress, in answer to a request for suggestions as to the means of reducing taxes from Mr. Preston, chairman of the state tax commission, president of the Hamilton National Bank of Chattanooga, and president of the American Bankers' Association, proposed that the ninety-five counties of the state be consolidated into eleven units, comprising on an average eight or nine counties, and each with an area of some 3,790 square miles and a population of about 211,884. These new counties should be grouped around an important town, the highway and railroad center of each district. In order to overcome the sentimental objection to changing county names, Mr. Childress, suggested that the eleven new units be named as follows: George Washington county, John Sevier county, Robert E. Lee county, Andrew Johnson county, Benjamin Franklin county, Andrew Jackson county, James K. Polk county, Sam Houston county, Davy Crockett county, James Madison county, and Bedford Forrest county.

Under the present arrangement of counties, each of the ninety-five units supports, on an average, twenty principal officers, costing the average county some \$200,000. For the total number of counties this means 1,900 chief officers and an annual expenditure for this item alone of \$19,000,000. Assuming that a similar plan of internal organization would be followed in the new units, the total cost would not greatly exceed \$2,200,000.

Of course many objections to the plan will be raised, for it is no small undertaking to reduce the number of counties from ninety-five to eleven. Therefore, as a matter of expediency, Mr. Preston has suggested that the number be reduced to about fifty, and that the method be that of absorption, as has been employed in the case of Hamilton and James counties. Certainly a beginning of reform could be made by grouping several counties about the four chief cities of the state, i.e., Memphis, Nashville, Knoxville, and Chattanooga; and the process has actually begun in the Chattanooga district.

JOHN W. MANNING.

*Vanderbilt University.*

## DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES<sup>1</sup>

COMPILED BY PITMAN B. POTTER

*University of Wisconsin*

### POLITICAL PHILOSOPHY AND PSYCHOLOGY

- \**Summerfield Baldwin*, *3d*; A.B., Harvard, 1917; A.M., *ibid.*, 1917.  
The Doctrine of the Common Weal. *Harvard*.
- \**Arthur S. Bearsley*; LL.B., University of Washington, 1918; B.S.,  
*ibid.*, 1924. An Introductory Course in Legal Bibliography and  
Research—A Laboratory Method. *Washington*.
- Norman Woods Beck*; A.B., Chicago, 1923. A Group of Political  
Scientists as Inventors. *Chicago*.
- Jesse Thomas Carpenter*; A.B., Duke, 1920; A.M., Iowa, 1925. Sec-  
tional Minorities and the Federal Constitution in the Ante-bellum  
South: A Study in Southern Political Thought. *Harvard*.
- Hsi-Lin Chao*; A.B., Reed, 1924; A.M., Columbia, 1925. The Chang-  
ing Conceptions of Sovereignty. *Johns Hopkins*.
- \**Su-Ching Chen*; A.B., Fuh Tan, China, 1925; A.M., Illinois, 1926.  
Recent Theories of Sovereignty. *Illinois*.
- Bernard Freyd*; A.B., University of Washington, 1916; A.M., *ibid.*,  
1918. The Political Theory of Otto Gierke, with Special Reference  
to his Work on Johannes Althusius. *Washington*.
- Grace Givin*; A.B., Kansas, 1914; B. S., *ibid.*, 1916. Louise DeKoven  
Bowen as a Political Leader. *Chicago*.
- Clyde W. Hart*; A.B., Milliken, 1915. Political Theory in American  
Literature. *Chicago*.
- Mary J. Herrick*; A. B., Northwestern, 1916. Jane Addams; a Study  
in Leadership. *Chicago*.

(1) Similar lists have been printed in the *Review* as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926), XXI, 645 (1927). No returns were received in preparation of the present list from the Brookings Graduate School, Clark, Ohio, Texas, and one or two other institutions at which, it is believed, graduate degrees are awarded. Attention is called to a list of theses in preparation at universities in Great Britain, published in *Economica*, No. 23 (June, 1928).

<sup>2</sup> Asterisks indicate dissertations completed during the current year.

- Edward C. Jenkins*; A.B., Swarthmore, 1927. Campaign Technique Traits of Certain Political Leaders. *Chicago*.
- \**Helen D. Hill*; A.B., Chicago, 1921. Anti-Stateist Theory in Recent Times. *Chicago*.
- \**C. O. Johnson*; A.B., Richmond, 1917; A.M., Chicago, 1921. Carter Harrison as a Political Leader. *Chicago*.
- Mary Z. Johnson*; Ph.B., Chicago, 1924. Development of Democratic Theory since 1848. *Chicago*.
- Agnes Smith Knowlton*; B.S., Utah, 1918; M.S., *ibid.*, 1920. Reed Smoot as a Political Leader. *Chicago*.
- Charles R. Layton*; A.B., Otterbein, 1913; A.M., Michigan, 1917. The Political Thought and Influence of John Bright. *Michigan*.
- Alfred Chih Tai Li*; A.B., Ohio Wesleyan, 1925; A.M., Ohio State, 1926. The Political Philosophy of Sun Yat-Sen. *New York University*.
- Ti-Tsun Li*; A.B., Wisconsin, 1925; A.M., *ibid.*, 1926. The Political Theories of Sun Yat-Sen. *Wisconsin*.
- \**Madge M. McKinney*; A.B., Western Reserve, 1916; M.S., *ibid.*, 1919. An Analysis of the Traits of Citizenship. *Chicago*.
- Irma H. Reed*; A.B., Radcliffe, 1924. The Political Theory of the Enlightened Despots. *Radcliffe*.
- Pearl Robertson*; Ph.B., Chicago, 1923; A.M., *ibid.*, 1925. Grover Cleveland as a Political Leader. *Chicago*.
- \**Dorothy Schaffter*; A.B., Iowa, 1924; A.M., *ibid.*, 1926. The Bicameral System in Practice. *Iowa*.
- John Frederick Thompson*; A.B., Pomona, 1927. Political Activities of Organized Groups in Massachusetts. *Harvard*.

#### UNITED STATES GOVERNMENT AND POLITICS AND CONSTITUTIONAL LAW

- \**Harold F. Alderfer*; A.B., Bluffton, 1922; A.M., Syracuse, 1926. The Personality and Politics of Warren G. Harding. *Syracuse*.
- \**Julius R. Bell*; A.B., Valparaiso, 1923. Public Purpose in Taxation and Eminent Domain. *Indiana*.
- Eleanor Bontecou*; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe*.
- M. E. Brake*; Ph.B., Chicago, 1920; J.D., *ibid.*, 1920. Criminal Law Enforcement by Injunction under Federal Legislation. *Chicago*.

- Paul Herman Buck*; A.B., Ohio State, 1921; A.M., *ibid.*, 1922. Party Divisions in the Van Buren and Tyler Administrations. *Harvard.*
- Ralph D. Casey*; A.B., Washington, 1913; A.M., *ibid.*, 1919. Propagandist Methods of Political Parties. *Wisconsin.*
- Royden Dangerfield*; B.S., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago.*
- \**Marshall E. Dimock*; A.B., Pomona, 1925. Congressional Investigating Committees. *Johns Hopkins.*
- \**R. M. Duncan*; Origins of the American Concept of Citizenship. *Princeton.*
- Russell Forbes*; A.B., Westminster, 1918; A.M., Columbia, 1919. Administration of Public Purchasing. *Columbia.*
- \**Curtis W. Garrison*; A.B., University of Richmond, 1923. The National Election of 1824. *Johns Hopkins.*
- Lawrence V. Howard*; A.B., Southern College, 1920. The Method of Settling International Controversies by the United States. *Chicago.*
- Clarence L. Kincheloe*; A.B., California, 1923; J.D., *ibid.*, 1925. The Growing Relative Power of the National Executive since 1885. *California.*
- \**Maria Lanzar*; Ph.B., University of the Philippines, 1922; A.M., *ibid.*, 1923. The Anti-Imperialist League. *Michigan.*
- Joseph T. Law*; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations upon the Delegation of Legislative Power. *Wisconsin.*
- Albert Lepawsky*; Ph.B., Chicago, 1927. Choice and Tenure of Judges in the United States. *Chicago.*
- \**P. S. Lum*; A.B., Princeton, 1923. The Administration of the United States War Department. *Johns Hopkins.*
- Alexander Norman*; A.B., University of North Dakota, 1919; A. M., *ibid.*, 1920. Rights of Aliens under the Federal Constitution. *Columbia.*
- Mildred Bertha Palmer*; A.B., Pomona, 1921; A.M., Radcliffe, 1923. The Congressional Election of 1858, with Regard to the Development of the Republican Party. *Radcliffe.*
- S. Lyle Post*; A.B., University of California at Los Angeles, 1925. Methods of Coördination in American National Governmental Administration. *California.*
- Rex M. Potterf*; A.B., Indiana, 1918; A.M., Columbia, 1923, and Indiana, 1926. The Treaty of Versailles before the United States Senate. *Wisconsin.*

- Charles C. Rohlfing; B.S., Pennsylvania, 1923; A.M., *ibid.*, 1925. National Regulation of Aviation in the United States. *Pennsylvania*.
- Helen R. Rosenberg; A.B., California, 1923; A.M., *ibid.*, 1924. The Vice-Presidency of the United States. *California*.
- George A. Shipman; A.B., Wesleyan, 1925; A.M., *ibid.*, 1925. The Judicial Doctrines of Justice Stephen J. Field. *Cornell*.
- Elmer Lacey Shirrell; B.L., California, 1914; A.M., *ibid.*, 1925. Administrative Organization of the United States Veterans Bureau. *Stanford*.
- \*Frank M. Stewart; A.B., Texas, 1915; A.M., *ibid.*, 1917. History of the National Civil Service Reform League. *Chicago*.
- Tienkai Lincoln Tan; A.B., Peking Teachers' College, 1922; A.M., Stanford, 1924. The Foreign Policy of Woodrow Wilson. *Stanford*.
- Harold Tascher; A.B., Illinois, 1925; A.M., *ibid.*, 1926. Industrialization and the Consular Service. *Illinois*.
- Hugo Wall; A.B., Stanford, 1927. Occupational Licenses and Permits; their History and Administration. *Stanford*.
- \*A. J. Zurcher; The Theory and Fact of Presidential Power. *Princeton*.

#### STATE AND LOCAL GOVERNMENT IN THE UNITED STATES

- \*Francis Robert Aumann; A.B., Ohio Wesleyan, 1921; A.M., Ohio State, 1925. The Administration of Justice in Iowa Municipalities. *Iowa*.
- Helen Elizabeth Brennan; A.B., Radcliffe, 1920; A.M., Bryn Mawr, 1921. The Development of Separate Departments of Government in Massachusetts, 1628-1780. *Radcliffe*.
- Roy Edward Brown; A.B., Iowa State Teachers' College, 1923. Police Organization and Administration in Iowa. *Iowa*.
- Daniel B. Carroll; A.B., Illinois, 1915; The Unicameral Legislature of Vermont. *Wisconsin*.
- Keith Carter; A.B., Randolph-Macon, 1907; A.M., Columbia, 1925. Criminal Appeals in Texas. *Columbia*.
- C. H. Chang; St. John's University, Shanghai, 1924; A.M., Columbia, 1925. Police Administration in New York, Chicago, and Philadelphia. *Illinois*.

- E. DeHaas*; A.B., Hunter College, 1923; A.M., Columbia, 1925. The Bail-bond. *Columbia*.
- Lowry A. Doran*; A.B., Drury, 1910; A.M., Chicago, 1917. The Party System in Maine. *Chicago*.
- Lavinia M. Engle*; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins*.
- \**C. R. Erdman, Jr.*; The First Constitution of New Jersey. *Princeton*.
- Russell Ewing*; A.B., Minnesota, 1923; A.M., Columbia, 1924. The Problem of Personnel under City Management. *Columbia*.
- Sonya Forthal*; A.B., Wisconsin, 1922; A.M., *ibid.*, 1923. An Analysis of the Functions of Precinct Committeemen. *Chicago*.
- Harry J. Green*; A.B., Johns Hopkins, 1926; LL.B., Maryland, 1927. The Maryland Legislature. *Johns Hopkins*.
- Victor Hunt Harding*; LL.B., Syracuse, 1907; A.B., Stanford, 1925. Non-Voting in California. *Stanford*.
- \**Jacob Mark Jacobson*; A.B., Brown, 1926; A.M., *ibid.*, 1926. State Administrative Reorganization: a Study and Evaluation of Proposed and Adopted Plans. *Brown*.
- \**David Wilbur Knepper*; A.B., Iowa State Teachers' College, 1923; A.M., Iowa, 1927. Some Aspects of Municipal Finance in Iowa. *Iowa*.
- Horace J. Knowlton*; A.B., Utah, 1920; LL.B., *ibid.*, 1923; J.D., Chicago, 1925. Salaries and Wages in the Chicago Civil Service, 1910-1925. *Chicago*.
- W. Rolland Maddox*; A.M., Ohio Wesleyan, 1923; A.M., Cincinnati, 1924. Municipal Home Rule in Ohio; an Evaluation. *Michigan*.
- Roscoe C. Martin*; A.B., Texas, 1924; A.M., *ibid.*, 1925. The Populist Movement in Texas. *Chicago*.
- \**Bertram W. Maxwell*; A.B., Minnesota, 1917; A.M., Iowa, 1923. Contemporary Municipal Government in Germany. *Iowa*.
- David M. Maynard*; B.S., Princeton, 1922; A.M., Columbia, 1925. Operation of the Referendum in Chicago. *Chicago*.
- George H. McCaffrey*; A.B., Harvard, 1912; A.M., *ibid.*, 1913. The Government of Metropolitan Boston. *Harvard*.
- Joseph McGoldrick*; A.B., Columbia, 1923; A.M., *ibid.*, 1923. Municipal Home Rule, 1916-1928. *Columbia*.
- C. McKensie*; A.B., Dartmouth, 1920; A.M., Columbia, 1921. The New Hampshire Town. *Columbia*.
- \**W. C. Murphy*; A.B., Arkansas, 1909; A.M., Chicago, 1912. County Government in Arkansas and Mississippi. *Illinois*.

- Spencer D. Parratt*; A.B., Utah, 1924. Organization of Governments in the Regional Area of Chicago. *Chicago*.
- \**John McDonald Pfiffner*; A.B., Iowa, 1916; A.M., *ibid.*, 1917. The Mayor in Iowa Municipalities. *Iowa*.
- Mary Elizabeth Pidgeon*; A.B., Swarthmore, 1913; A.M., Virginia, 1924. Chicago Mayoralty Election of 1927. *Chicago*.
- Joseph Pois*; A.B., Wisconsin, 1926; A.M., Chicago, 1927. The Recruitment of Politics. *Chicago*.
- Julius Prufer*; A.B., Roanoke, 1920; A.M., *ibid.*, 1921. A Study of Non-Voting in Virginia. *Chicago*.
- \**G. Kenneth Reiblich*; A.B., Johns Hopkins, 1925. A Study of Judicial Administration in the State of Maryland. *Johns Hopkins*.
- Clarence Ridley*; B.C.E., University of Michigan, 1914; A.M., Columbia, 1921. Means of Measuring Municipal Government. *Syracuse*.
- \**John T. Salter*; A.B., Oberlin, 1921. The Non-Partisan Ballot in Pennsylvania Cities of the Third Class. *Pennsylvania*.
- Burton F. Scott*; A.B., Washington, 1919. History of Police in Chicago. *Chicago*.
- Roy Vivian Sherman*; A.B., Iowa, 1925; A.M., *ibid.*, 1926. The Municipal Electorate in Iowa. *Iowa*.
- C. R. Sherrill*; A.B., Wake Forest, 1921; A.M., Columbia, 1925. Criminal Appeals in North Carolina. *Columbia*.
- Milton V. Smith*; A.B., Pomona, 1923; A.M., Harvard, 1925. Public Regulation of Commercial Amusements in California. *California*.
- \**Jacob Armstrong Swisher*; A.B., Iowa, 1917; A.M., *ibid.*, 1918. The Incorporation and Legal Status of Municipal Corporations in Iowa. *Iowa*.
- \**Harvey Walker*; A.B., Kansas, 1924; A.M., Minnesota, 1927. Limitations upon the Municipal Ordinance-making Power under the Constitution of the United States. *Minnesota*.

## FOREIGN AND COMPARATIVE GOVERNMENT

- Paul Birdsall*; A.B., Harvard, 1921; A.M., *ibid.*, 1925. The History of the Royal Prerogative in England to 1649. *Harvard*.
- A. G. Dewey*; A.B., McGill, 1911; A.M., *ibid.*, 1913. Canada and the Control of Imperial Foreign Policy. *Columbia*.
- \**D. F. Fleming*; A.B., Illinois, 1916; Ph.D., *ibid.*, 1928. The Ratification of Treaties. *Illinois*.
- Margaret A. Judson*; A.B., Mount Holyoke, 1922; A.M., Radcliffe,

1923. *The Growth of the Theory of Parliamentary Sovereignty in England between 1640 and 1660.* Radcliffe.
- \*Walter Laves; Ph.B., Chicago, 1923. *German Policy with Regard to Foreign Investments.* Chicago.
- Chuang Liu; Ph.B., Chicago, 1920. *The Chinese Civil Service.* Chicago.
- Ethel Marie Manning; A.B., California, 1920; A.M., Southern California, 1926. *Britannic Citizenship.* Stanford.
- \*Kurt R. Mattusch; A.M., Wisconsin, 1927. *British Policy Relating to the Administration of India, 1905-1924.* Wisconsin.
- S. McCordock; A.B., Syracuse, 1918; A.M., University of Buffalo, 1926. *British Policy in the Far East.* Columbia.
- Howard Pendleton; A.B., Columbia, 1921; A.M., *ibid.*, 1924. *Public Prosecution in England.* Columbia.
- Gerda C. Richards; A.B., Smith, 1922; A.M., Radcliffe, 1923. *The Transformation of the Tory Party after 1780.* Radcliffe.
- R. W. Rogers; A.B., Pacific, 1922; A.M., Columbia, 1926. *Mediterranean Policy of Italy, 1920-1927.* Columbia.
- Masao Matsumoto Suma; A.B., Stanford, 1927; A.M., *ibid.*, 1928. *Administration of Governmental Finances in Japan.* Stanford.
- Sterling H. Takeuchi; A.B., Texas, 1925; A.M., *ibid.*, 1926. *Control of Foreign Relations in Japan.* Chicago.
- Edgar C. Tong; A.B., Boone, China, 1922; A.M., Missouri, 1927. *Constitutional Development of China.* Columbia.
- \*Choa-Kwang Wu; A.B., Columbia, 1925. *The Legal and Political Aspects of the Missionary Movement in China.* Johns Hopkins.

#### INTERNATIONAL ORGANIZATION AND POLITICS AND INTERNATIONAL LAW

- \* Paul S. Bachman; B.S., Ohio State, 1922; A.M., University of Washington, 1925. *John Marshall's International Law Doctrines.* Washington.
- L. M. Bishop; A.B., Dartmouth, 1906; A.M., Columbia, 1917. *Arbitral Procedure.* Columbia.
- D. C. Blaisdell; B. S., Penn State, 1920; A.M. Columbia, 1926. *Foreign Financial Control in Turkey.* Columbia.
- Dennis William Brogan; A.M., Glasgow, 1922. *International Aspects of Irish Nationalism.* Harvard.
- \* Laverne Burchfield; A.B., Michigan, 1921; A.M., *ibid.*, 1923. *The*



- Theory of American International Law: an Analysis and Criticism. *Michigan*.
- Howard B. Calderwood, Jr.; A.B., Ohio Wesleyan, 1921. International Protection of Minorities in National States. *Wisconsin*.
- Chung-Fu Chang; A.B., Michigan, 1923; A.M., Harvard, 1927. The Anglo-Japanese Alliance. *Johns Hopkins*.
- Lin Ngo Chang; A.B., Tientsin Anglo-Chinese College, China, 1915. The Attitude of China toward the League of Nations. *Chicago*.
- P. C. Chu; Nan Woo College, China, 1915. Title to Territory under International Law. *Chicago*.
- \* James Quayle Dealey, Jr.; A.B., Brown, 1920; A.B., Oxford, 1923; A.M., *ibid.*, 1928. The Navigation of Boundary and Connected Waters, Particularly as Relates to the United States. *Harvard*.
- \* Frederick S. Dunn; B.Litt., Princeton, 1914; LL.B., New York Law School, 1917. The Practice and Procedure of International Conferences. *Johns Hopkins*.
- A. E. Elliott; A.B., Drake, 1915; A.M., College of Missions. Latin-American Attitude toward the Pan-American Union. *Columbia*.
- Sooren Frankian; A.B., California, 1924; A.M., *ibid.*, 1926. British Foreign Policies and the League of Nations. *California*.
- Frederic W. Ganzert; A.B., California, 1926; A.M., *ibid.*, 1927. Brazil and the Pacific Settlement of International Disputes. *California*.
- \* C. B. Gosnell; Compulsory Arbitration in International Law. *Princeton*.
- Paul Heaton; A.B., Minnesota, 1924; A.M., *ibid.*, 1925. Extraterritoriality in China. *Chicago*.
- John G. Herridon; A.B., Washington and Lee, 1910; A.M., *ibid.*, 1912. International Reciprocity in Income Taxation. *Pennsylvania*.
- \* John G. Hirvey; A.B., Oklahoma, 1923; LL.B., *ibid.*, 1925. The Legal Effects of Recognition as Interpreted by the Courts of the United States. *Pennsylvania*.
- Hoen Hu; A.B., Fuh-Tan, China, 1925; A.M., Columbia, 1927. Measure of Damages in International Claims. *Columbia*.
- Po-Wen Huang; A.B., Harvard, 1926; A.M., Columbia, 1923. Foreign Tariff Control of Debtor Countries. *Columbia*.
- Charles S. Hyneman; A.B., Indiana, 1923; A.M., *ibid.*, 1925. The Fulfillment of Neutral Duties by the United States during the Revolutionary and Napoleonic Wars. *Illinois*.
- Warren H. Kelchner; A.B., Pennsylvania, 1923; LL.B., Valparaiso, 1917. South American Relations to the League of Nations. *Pennsylvania*.

- Grayson L. Kirk; A.B., Miami, 1924; A.M., Clark, 1925. An Analysis of French Policy in Alsace-Lorraine since 1919. *Wisconsin*.
- K. P. Kirkwood; A.B., University of Toronto, 1922; A.M., Columbia, 1927. The Solution of the Minority Problem in Turkey. *Columbia*.
- J. A. Levandis; B.S., University of Delaware, 1921; A.M., Columbia, 1922. International Financial Control of Greece. *Columbia*.
- A. M. Margalith; A.B., Johns Hopkins, 1926. An Inquiry into the Juristic Nature of the Mandate System. *Johns Hopkins*.
- W. Mauck; A.B., Hillsdale, 1921; A.M., Columbia, 1927. The Saar Basin. *Columbia*.
- G. A. McCleary; A.B., Ohio Wesleyan, 1917; J.D., Michigan, 1924. The Distinction between Political and Legal Questions under International Law. *Chicago*.
- George W. McKenzie, Jr.; B.S., Connecticut Wesleyan, 1922; A.M., Columbia, 1924; M.F.S., Georgetown, 1925. A Study of Latin-American Boundary Problems. *New York University*.
- Vera Micheles; A.B., Radcliffe, 1925; A.M., Yale, 1926. Governments *de facto*, with Special Reference to the Soviet Government. *Radcliffe*.
- G. Noble; A.B., Oxford, 1915; A.M., *ibid.*, 1923. The Open Door Policy in China. *Columbia*.
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- Yoo-Hsiang Peng; B.S., Miami, 1921; A.M., Columbia, 1922. Relations between China and France. *Columbia*.
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## BOOK REVIEWS

EDITED BY A. C. HANFORD

*Harvard University*

*The Republican Party.* BY WILLIAM STARR MYERS. (New York: The Century Co. 1928. Pp. xii, 487.)

*The Democratic Party.* BY FRANK R. KENT. (New York: The Century Co. 1928. Pp. xii, 568.)

These two companion volumes cover much the same ground, use much the same data, present much the same personalities, tell much the same general story, yet from radically different points of view and to the end of radically different conclusions. The style and method are also radically different, though both are distinctly "popular." Mr. Kent undertakes a narrative covering 136 years "as a reporter rather than as a historian," with the purpose not of glorifying his party but of telling the truth about it (p. vi)—only to produce a history that is also a eulogy. Of his journalistic abilities there is no lack of evidence. His style is vivid, graphic, absorbing, and often gripping, his thrilling description of the 1912 Baltimore convention being journalism at its best. He gets down to his subject at once, quite in contrast with Professor Myers' long introduction on the character of American parties and party life. Yet his enthusiasm easily runs away with itself and he appears to forget earlier individual characterizations in later sweeping generalizations, as when he says that "Polk, Pierce, and Buchanan did not qualify as great presidents" (p. 182), and then later speaks of "the Democratic party with its long line of fine presidents" (p. 183). There are too many evidences of hasty or careless workmanship, and it is doubtful whether even the reporter's refuge is adequate for the use of such expressions as, "which is certainly saying an awful lot" (p. 52), "the idea does not click" (p. 110), "it at once ditched the Van Buren chances—from that moment he was sunk" (p. 138), and for referring to President Pierce's cabinet as "fairly efficient fellows" (p. 173).

It is no more necessary for Dr. Myers to inform the reader that he writes as a college professor than for Mr. Kent to explain his professional connections. With methodical precision he gives to each national convention and election exactly the same treatment and includes innumerable details that make this volume more complete as

a general history and more useful to the student of politics but far less interesting for the general reader. It is of no great significance that in the convention of 1872 Senator Morton was seated while he spoke, nor startlingly unusual that three colored delegates were loudly cheered or that the hall was lighted by gas and thereby made hot and the air close (p. 199). Further, the narrative is frequently interrupted and lost in rather long quotations from source materials and some materials that cannot be classed as sources. Footnote references are as abundant in this volume as they are lacking in the Kent volume.

Mr. Kent's work is much more a party narrative and less an American history than Dr. Myers' work, though the latter improves materially in this respect from McKinley's administration to the conclusion of the book. Dr. Myers devotes 120 pages to the period preceding Lincoln's first inaugural—a lack of proportion, it would seem. Mr. Kent more freely interjects his own personal comment, observations, and conclusions. In general treatment he differs from Professor Myers' methodical procedure in conceiving that the "real story of the Democratic party is the story of the five or six genuinely great men who stand out in its history," and he "drapes" the party history largely around the "towering party personalities" of Jefferson, Jackson, Cleveland, Bryan, and Wilson. The character studies are vividly and honestly drawn.

The two volumes may rightly be regarded as supplementing each other, yet the reader is often perplexed in forming his judgments from them. "Personal liberty" is held by Mr. Kent to be a fundamental principle of his party, yet Mr. Myers asserts that this was "snatched away . . . by the Republicans of seventy years ago" (p. 12). Mr. Kent insists that the Democrats have always been more willing than the Republicans to grapple with a controversial question on the basis of traditional principles, whereas Mr. Myers quotes approvingly that "it may well be questioned whether as a party it [the Democratic] has any fixed and abiding convictions" (p. 278). Concerning President Polk there is direct contradiction. Says Myers, "Polk . . . was keen enough to appreciate the possibilities of the office of president. He dominated and led the Democratic party . . . in a way that was a decided reminiscence of Andrew Jackson and an anticipation of Woodrow Wilson" (p. 18); says Kent, "it is hard to conceive of Mr. Polk . . . as either a great man, a great president, or a great party leader" (p. 149).

Both books are professedly non-partisan and doubtless are as fair and impartial as party histories are likely to be, but they are not objective studies; and that each man is writing the narrative of his own party is clearly obvious. Mr. Kent describes his party as one "that through five generations has produced more interesting and influential figures than all the others combined" (p. 3) and glories in the "indisputable greatness of the basic Democratic principles . . . and essential soundness of the historic Democratic doctrines" (p. 4). Professor Myers, in commenting upon the Hayes-Tilden election, quite unwisely charges, without proof, that "the Democrats have too many skeletons in their own family closet to be unwary in their bandying of charges" (p. 228), and then even more unwisely suggests a comparison of conditions in 1876 and 1926. If Mr. Kent is intemperate in lauding his party heroes, Mr. Myers is even more addicted to extravagances, as in his well-nigh reverence for Roosevelt and bitter prejudice against Wilson.

Mr. Kent ventures far from the field of the historian into the realm of prophecy. He is sanguine of the future of his party. There is a "vital spark" in it "that cannot be extinguished," and even though at present it be "issueless and leaderless" it is still full of energy, vigor, and promise. It is "the party of the people—a party that represents one of the great natural views of government," he believes, as it carries on under the slogan given it by Jefferson, "Equal rights for all, special privileges for none" (p. 41). It is strongest when it maintains its fundamental principles on economic issues, states' rights questions, and personal liberty controversies; weakest when it deserts them. Handicapped by predominant Republican control of the channels of publicity, by the popular belief that prosperity attends only Republican administrations, by sectional splits and lack of unity on fundamental issues, the party will nevertheless eventually, and perhaps soon, Mr. Kent believes, rise out of the minority position to which the Bryan domination consigned it. Professor Myers holds more closely to the historian's province of recording the past without venturing into the uncertainties of the future.

HAROLD R. BRUCE.

*Dartmouth College.*

*Primary Elections.* BY CHARLES E. MERRIAM AND LOUISE OVERACKER.  
(Chicago: The University of Chicago Press. 1928. Pp. xi, 448.)

In a large measure, this is a revision of Professor Merriam's well-



known *Primary Elections* of 1909; it is written "in order to present an analysis of recent changes, an interpretation of the nominating process in the light of new tendencies, and some suggestions for a constructive program of nominating development."

The first three chapters of the former study, recounting the early history of the movement to regulate primaries by law, appear without modification in the present volume. The next three chapters, "Regulation of the Convention System," "Direct Primary Legislation," and "Judicial Interpretation of Primary Laws," have been thoroughly revised to date. A new chapter on "Presidential Primaries"—in the main an excellent compression of Miss Overacker's recent book on the subject—has been added, as well as another short chapter on "The Analysis of Primary Forces," which will serve for the inquiring but doubtful and hesitant primary voter much the same purpose as the museum guide serves for the lay visitor in the art gallery. Two chapters are devoted to the practical working of the primary and two to summary and conclusions (pp. 208-358).

Four well-prepared and valuable appendices, largely the work of Dr. Luella Gettys, complete the volume. One is a list of the cases involving primary legislation; another, a summary and digest of existing primary laws; another, a chronological citation of such legislation from 1866 to date, a glance at which reveals the sweep, volume, and mutability of this type of legislation; the fourth, an extensive, and for recent years quite exhaustive, bibliography, with sources of statistical material for primary and general election returns.

Two or three general observations may be made. First, as the title indicates, not the direct primary only, but primary elections, constitutes the subject matter. In the fore part of the final chapter, convention problems are presented under several headings—the district gerrymander, indirect election of delegates, instruction of delegates, and platform preparation. Second, the book does not purport to be definitive but rather tentative. The authors recognize in proportional representation, nomination by petition, and so-called non-partisan forms, competing methods of choice which they prefer to partisan primaries, direct or indirect, for local elections. They admit that the repeal of all primary regulations is thinkable, and that a new form of executive leadership may arise with the effect of reducing the importance of parties. Third, informed by practical experience in many a campaign and by years of intent inspection of party processes, Professor Merriam explores with keen insight the meaning and

effects of regulation and the reactions of individuals and factions. "The level of politics is in the long run the level of intelligent interest in men and affairs political. Under any system the largest and most skillful group of interested and active citizens will determine public policies and will select the persons to formulate and administer them (p. 352)."

The pre-primary slate, the pre-primary convention, the non-partisan primary, woman suffrage, and the modern art of advertising and publicity are discussed as unforeseen tendencies which have affected the operation of the direct primary and rendered more difficult a calculation of its utility. To every complaint filed against the direct primary, the authors respond, "No bill;" or rather, assuming a *prima facie* case to have been made out, the verdict upon every count of the indictment is for the defense upon a greater or lesser preponderance of the evidence. "In short, of all the arguments against the direct nominating system, the charge that it destroys or tends to destroy the party system and party responsibility is the least tenable. . . ."

In an evaluation of the alleged merits and defects of the direct primary, there are examined the questions of expense, of the effect upon machines and bosses, of the importance of the primary in one-party governmental areas, of party membership tests, of the percentage of the total vote required for nomination, and of the relation of the primary to blocs. In order to furnish any nominating system a fair chance to function effectively, the simplification of government and a reduction in the number of elective offices are considered necessary, as well as a return to the original form of the Australian ballot, an extension and enforcement of the merit system, an elevation of the level of administration and leadership, and the further political education of the electorate to substitute an attitude of discrimination for one of traditionalism and suspicion.

Little attempt is made to analyze the causes of the widespread, although almost universally unsuccessful, attack upon the direct primary during the last ten years, and with one or two exceptions the constructive proposals are of a limited nature, hardly touching the main features of the primary. The idea of party conferences is set forth at length as a voluntary means of developing leadership and responsibility. A challenge is issued: "If a party cannot confer on its common problems, what is wrong with it? Why does it differ in this respect from all other types of modern social organization, com-

mercial and cultural alike?" It may be a partial answer that no other organization has its membership controlled, not by itself, but by law. At all events, any expectation that parties will soon take themselves in hand to correct their faults ill comports with the suggestion that "it may become necessary to restrict the length of demonstrations to, say, fifteen minutes unless an agreement upon the division of time can be amicably reached; or even upon the type of noise-makers and the total volume of sound permitted, in relation, of course, to the cubage and acoustics of the place of assembly (p. 326)."

In a penetrating analysis of the problem of candidate expense, the advanced but apparently sound position is taken that such expense is quite as much a public question, and in effect incurred as much in the public interest, as are other costs of the primary which have been assumed by the state.

If by the statement that "in counties party government does not effectively function" is meant merely that parties are about to "abdicate responsible leadership" here, as it is said they have done in cities, there seems to be a mite of inconsistency with the assertion that half the counties of the United States are one-party counties in which nominations are equivalent to elections. Municipal reformers of a generation ago may not agree that "in urban elections the national party system was never strong in the United States" (p. 216). Perhaps too positive a statement is this: "In practice party lines are almost wiped out in most city elections," as is more or less conceded on the same page with the admission that "the national parties will and do exercise great and sometimes dominating influence in local choices. . . ." (p. 295).

There seem to be only very few misstatements of fact. On pages 58, 76, and 342 it is stated that ten per cent of the pre-primary convention vote in Colorado is sufficient to secure a candidate a place on the ballot, but on page 216 the present requirement of twenty per cent is correctly given. County officers are said to be nominated by non-partisan primary in "California, Minnesota, and North Carolina," when probably North Dakota is meant. Nebraska should be included among the states (p. 92) in which proposals to nominate all state officers on a non-partisan ballot have been defeated at referendum elections, as it is on page 348. The statement on page 100 that in every one of the central states except North Dakota attempts have been made to repeal the direct primary hardly harmonizes with the inclusion of North Dakota among the states in which popular referenda have

sustained the primary (p. 271). On page 340 the impression is given that Michigan and South Dakota, as well as Iowa, resort to convention nominations in case no candidate receives a certain percentage of the primary vote. Ambiguous or awkward expressions occur on pages 319, 320, 321, due probably to slips by the printer and oversight in proof-reading. "Thusly" creeps in on page 92.

On the whole, this is a timely work and well-executed. It is more than a study of primary elections; running through the discussion are thought-provoking comments upon and fundamental examinations of the operation, function, and control of the agencies for forming and formulating opinion and selecting political leaders in a democratically organized government. The style is clear and readable.

RALPH S. BOOTS.

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*The Speaker of the House of Representatives since 1896.* BY CHANG-WEI CHIU. (New York: Columbia University Press. 1928. Pp. 347.)

This treatise is a penetrating examination of what Professor A. B. Hart has termed "actual government." By means of a careful analysis of relevant statistics, congressional debates, Hind's *Precedents*, newspaper extracts, magazine articles, and biographical and autobiographical sketches, the author has succeeded in presenting a lively and accurate understanding of the Speaker of the House of Representatives since 1896. It will be recalled that Miss M. P. Follett made a study of this office before that date.

Naturally, a study of the Speaker since 1896 is divisible into two parts. First is the period between 1896 and 1910. Second is the period since the "revolution" of 1910-11. From 1896 to 1910 the Speaker occupied a very important, although not czar-like, position in the House. His control over committees, his dominance over the committee on rules as chairman, his extensive powers as a presiding officer almost made him a premier over the legislative program. Furthermore, the qualities of leadership possessed by men of the caliber of Reed and Cannon had the effect of concentrating considerable influence in the hands of Mr. Speaker.

Mr. Chiu's belief is that since the "revolution" the Speaker has retained much, if not all, of his political prestige. In depriving the Speaker of the chairmanship of the committee on rules and of the power to select the chairmen of the various committees, the House, however, succeeded in reducing the conspicuous position as presiding

officer which he formerly enjoyed. These latter changes, let it be noted, were more nominal than real. The Speaker is still a political factor to be reckoned with. In the first place, the fact must never be forgotten that the Speaker is a member of the House, and that he is an agent for his constituency, dedicated to the task of obtaining for his congressional district as many legislative favors as possible. Through his intimate knowledge of parliamentary practice, his wide information about the legislative situation in the House, his right to debate and to vote on all measures, and his often determining influence in the caucus, the Speaker wields an astonishing amount of influence in turning appropriations toward his constituency. Second, the office of Speaker has been conspicuously successful in attracting leaders. To be an effective Speaker, it is highly necessary not only that one should be a skillful parliamentarian, but that one should possess the prowess to induce an unwieldy body like the House to follow his persuasions and admonitions. The Speakers since 1896 have been forceful and astute men. Thirdly, the House of Representatives, in common with other representative assemblies, has been deluged with a mass of legislative inventions designed to deal with the complexities of an industrial age. Mr. Chiu deftly shows how the ingeniously contrived rules of procedure, the growth of the influence of the steering committee, the constantly increasing importance of committee action, and the extensive powers of the majority floor leader are frequently of little avail in cutting the Gordian knot of a legislative jam. The situation has demanded and has brought forth rulings of the Speaker which have had the effect at once of enhancing his power and prestige and of enabling the House to turn its attention to important legislative projects. Fourth, "the Speaker and party leaders know what measure or measures will come before the House for consideration, who will debate for or against the measure, and usually the point of order to be raised on the floor of the House." The whole proceeding is really what is called a dress rehearsal at which members of the House recite their respective parts to the constituents in Buncombe. This condition is possible only through the Speaker's control of recognition."

Mr. Chiu contends that in a number of respects the power of the Speaker has diminished since 1910. This reduction has followed in part from depriving the Speaker of his control over committees, including that on rules, and in part from certain limitations upon him resulting from the organization of the House and from the develop-

ment of the position of the floor leader and the steering committee. First, the chairman of a committee, especially an important committee, has power to control legislation in that he is an influential leader. Furthermore, "the House is a club of shrewd politicians." The Speaker is able to exercise power only to the degree that he is willing to accommodate the political interests of his fellow congressmen. In addition, "leadership," to use the words of Mr. Luce, "is in commission," consisting, since 1911, of the Speaker, the floor leader, the chairmen of the committee on rules, the committee on appropriations, and the committee on ways and means, and the members of the steering committee. In determining the legislative program of the House, the Speaker is merely one of the more important members of this "commission." Since 1911 the Speaker has not had power to select the floor leader. Especially during the speakership of Mr. Gillett, the floor leader developed into a controlling force. At that time Mr. Mondell was the floor leader. Members found that they were unable to obtain recognition from the Speaker without obtaining Mr. Mondell's consent beforehand.

In spite of the fact that Mr. Chiu is a foreigner, this study is written in clear English and occasionally with grace. Readers will experience some difficulty in following the narrative, in view of the confusing use of the past tense and the historical present interchangeably with the present tense. The lack of an index deprives the book of mechanical convenience. Altogether, Mr. Chiu has a happy faculty of piercing beneath the formalities and the obvious features of the Speakership and of explaining the actual power, influence, and position of this significant office in our political system.

GEDDES W. RUTHERFORD.

*Iowa State College.*

*China: A Nation in Evolution.* BY PAUL MONROE. (New York: Macmillan Co. 1928. Pp. xv, 447.)

*China and the Nations.* BY WONG CHING-WAI. Rendered in English and Edited with an Introduction, Explanatory Footnotes, and a Map by I-SEN TENG AND JOHN NIND SMITH. (New York: Frederick A. Stokes Co. 1927. Pp. xxiv, 141.)

*Modern Democracy in China.* BY MINGCHIEN JOSHUA BAU. (Shanghai: The Commercial Press, Ltd. 1927. Pp. x, 467.)

*Contemporary Thought of Japan and China.* By KYOSON TSUCHIDA. (New York: Alfred A. Knopf. 1927. Pp. 240.)

*Selected Articles on China Yesterday and Today.* Compiled by JULIA E. JOHNSON. With an Introduction by DR. PING WEN KUO. (New York: The H. W. Wilson Co. 1928. Pp. lxxviii, 362.)

If the English-reading world is ignorant concerning China's domestic situation and international relations, such ignorance cannot be attributed to a dearth of publicity. For better or for worse, no country has received more advertising during the present century than China. The itinerant scholar, on special commission or sabbatical leave, the ambitious seeker of a higher degree, Chinese and non-Chinese, with or without first-hand knowledge of the country, the internationally-minded philosopher seeking new grist for his mill of comparison, the missionary, in the field or on furlough, cultivating his clientele, the active-minded propagandist of nationalism or of continued special rights and privileges in China, the personally (if not always safely) conducted tourist—all demonstrate that in the composition of books on China there is no hesitation and but little reticence. If publicity and special pleading could save a nation, surely China had been saved ere this.

Of the books under review, that by Professor Monroe gives the most complete bird's-eye view of the situation as it existed in China in the year 1927. The main drawback to such a view is that one sees the superstructure but little or nothing of the foundations. The reader of this volume should, however, acquaint himself at the outset with the object of the writer: "This volume is not for the specialist, or for those familiar with China; but for the average American puzzled by the complexity of the problem . . . yet earnestly desirous of understanding." Professor Monroe avows "a sympathetic attitude toward the aspirations and claims of the Chinese and an admiration for their achievements and their sterling qualities." He is more modest than the Englishman who prefaced his study of the Chinese Republic with the remark, "This volume tells everything that the student or the casual reader needs to know about the Chinese question." The more valuable part of the volume is the first half, although it is clear that the writer enjoyed himself vastly more in the second. The chapters on the institutions, the social background, and the philosophy and religions of China are excellent; that on the Republic is clear and dispassionate. But when Professor Monroe discusses the relations of the foreign

nations with China, and the claims of the more advanced of the Nationalists, he finds difficulty both in maintaining his balance and in being historically accurate. Sympathy is a better guide for the partisan than for the historian; if the "average American" is to consider the Chinese problem he would better follow the latter than the former.

Dr. Monroe's ability to compress is notable, but it sometimes leads him astray, e.g. (p. 133), Great Britain's second envoy to Peking was Lord Amherst, not Lord Elgin, and Lord Amherst was sent in 1816, not in 1813. Usage does not make it accurate to refer to the first Anglo-Chinese War as the "Opium War." On some quite debatable matters the author has no apparent doubt, as witness his reference (p. 253) to "the indefensible war of 1860, or the even less defensible punitive destruction of the Winter Palace [in point of fact, the Yuen Ming Yuen was the Summer Palace, not the Winter Palace] which followed." One does not have to uphold either the policy or the actions, as a whole, of the English and the French in 1860 to call attention to the fact that there were two sides to the problems involved in the struggles mentioned. Perhaps the most serious criticism to be made of the latter half of this study is the failure to present the foreign, or non-Chinese, claims along with those of the Chinese. Professor Monroe finds no apparent difficulty in summarizing and evaluating—in thirty-two pages—the history, policy, and problems (including that of education) of Christianity in China during the past thirteen centuries. Only one who has first-hand knowledge of a few of the complexities of this educational problem can accurately gauge the value of the criticism and the solution so simply and casually offered.

For those who desire a survey of China's international relations from the viewpoint of the extreme left, nothing better than Mr. Wong Ching-Wai's draft of a report on this subject can be expected. Mr. Wong is the sometime "chairman of the Governing Committee of the People's Government of China." Since springing into notoriety some nineteen years ago on the occasion of his attempted assassination of the Manchu prince regent, Mr. Wong has devoted his time to revolutionary activities in China and abroad. On account of his pro-Bolshevik relations in 1927, he was again forced into exile. *China and the Nations* was prepared by Mr. Wong for the International Problems Committee of the People's Conference of Delegates at Peking in April, 1925. Professor Monroe characterizes Mr. Wong's report mildly:



"Far more virulent in spirit (than Dr. Sun's *The International Development of China*), it breathes only hostility to foreigners (except the Russians), recognizes no disinterestedness in the policy of any people except the Russians, and maintains a most uncompromising spirit of criticism and of irreconcilability throughout." Truth and historical accuracy embarrassed Mr. Wong in composing his report no more than they do the composers of party platforms in the United States of America in the perfect days of June. When facts and party or revolutionary theory come into conflict one may be perfectly certain as to the victor. Exactly because this book is what it is, no student of Far Eastern affairs can afford to overlook it. A bibliography listing eight works described as "recognized as of the highest authority" contributes an element of unconscious humor, not on account of its briefness, but because a study of the works listed would demonstrate that the "spirit of truth" was far away when about three-fourths of the statements in the report itself were written.

Of quite a different type from the preceding volume is Dr. Bau's *Modern Democracy in China*. For his writings in the field of government and international relations Dr. Bau is well known in China and the United States. While thoroughly patriotic and anxious to see his country take a worthy place in the family of nations, his approach is that of a liberal republican rather than that of a revolutionist. He radiates light rather than heat in his discussion of the problem of government in China. The first part of his work is an interesting survey and analysis of the first decade of the Chinese Republic, 1912-22, and has historical value. The second part is given over to a general discussion of the elements and principles of political science and is not as valuable to American readers as the first section, although of more value to the Chinese student. The volume was first published in 1923, and was reviewed shortly thereafter by the undersigned, who pointed out that (pp. 153, 160) Viscount Bryce, and not a non-existent "Boyce," should be credited with *Modern Democracies*; also that Switzerland (p. 153) was misspelled. To find these errors in a reprint five years later gives one the feeling of meeting an old friend; in fact the only internal difference between the earlier and later editions is the change of date on the title page. The paper and the binding of the later edition are, however, considerably better.

While a valuable contribution to the body of knowledge in the West concerning contemporaneous developments in the philosophical thinking of Japan since 1868, there is, comparatively speaking, little

of interest or value to the student of government and political thinking in Mr. Kyoson Tsuchida's work. Of the twelve chapters, only two are devoted to China, which on a quantitative basis is scarcely fair to the philosophers of the Middle Kingdom, especially when one takes into account Mr. Tsuchida's statement (p. 190) that "Chinese thinking, unlike Japanese, can boast a great and long tradition." To be sure, this study deals with contemporary thought rather than with the thought of the past; but, even so, it is doubtful whether the thought of modern Japan is six times as great in quantity or value as that of modern China. The development in Japan of neo-Kantianism and neo-Hegelianism is traced in considerable detail, and the debt of leading Japanese thinkers to Europeans and Americans is gracefully acknowledged. A few of the results of modern industrialization upon Japanese life and thought are discussed from a philosophical point of view. Kang Yu-wei, Liang Ch'i-yueh, Ku Hung-ming, and Hu Shih are nodded to.

The most modest of the works here discussed and, on the whole, the most valuable is Miss Johnsen's *Selected Articles on China Yesterday and Today*. This is not in spite of, but because of, the fact that it is a compilation, and because it has a really valuable classified bibliography. China is quite too big, and the factors far too numerous and complex, to be presented intelligently and fairly by any one mind. It would be difficult to name another volume of equal size in which as much information on present-day China is contained and in which the divergent viewpoints—Chinese and non-Chinese—are as fairly presented. The material and the bibliography are arranged under three headings: China—the Background, China Today, and International Relations. The last-named section is sub-divided into General Discussion, Discussion in Favor of China, and Discussion against China. Among the authorities quoted are F. L. Hawks Pott, Charles Keyser Edmunds, Ku Hung-ming, Julean Arnold, T. Z. Koo, Hu Shih, V. K. Wellington Koo, E. T. Williams, Stanley K. Hornbeck, S. K. Alfred Sze, William J. Hail, and Henry Kittredge Norton. It is to be regretted that the compiler should have taken over the title of Professor E. T. Williams' valuable work. This, however, does not detract from the intrinsic value of a compilation well worth adding to any collection of works dealing with the Far East.

HARLEY FARNSWORTH MACNAIR.

*University of Chicago.*

*Latin America and World Politics.* BY J. FRED RIPPY. (New York: Alfred A. Knopf. 1928. Pp. 286.)

*South America Looks at the United States.* BY CLARENCE H. HARING. (New York: Macmillan Company. 1928. Pp. 243.)

*Adventures in American Diplomacy, 1896-1906.* BY ALFRED L. P. DENNIS. (New York: E. P. Dutton and Company. 1928. Pp. xii, 537.)

These three volumes are among the rapidly accumulating evidences of the increasing interest of the American people in their relations with other countries. All have the good qualities and the defects of a semi-popular appeal. All three authors seem to be striving, though perhaps only half-consciously, to cater to an interest which they think should be more intense than it is. As a result, we have three extremely readable books on American diplomacy.

Professor Rippy's volume, instead of following the usual practice of considering Latin America as a sort of awkward and unwieldy caudal appendage to the United States, treats it as a factor in world politics. The book is built around the interesting thesis that Latin America, ever since it became evident that its vast territories were to fall from the failing hands of Spain and Portugal, has been the object of rivalry among the European empires. President Monroe and his successors who have upheld his famous Doctrine put an end to the cruder methods of European imperialism, but, if Professor Rippy is correct, imperialism in its subtler forms, such as economic penetration and financial domination, has continued down to the present day. In the later phases of this contest the United States has been as active and as effective as any European empire. The evidence for the first half of the last century is plentiful and well known. Professor Rippy gives us a succinct and well-balanced account of the rivalry between Great Britain and the United States over Argentina, Cuba, Mexico, and Texas. He marshals his evidence for the later period in a manner which makes his thesis convincing if not conclusive.

Even if this view is not an all-embracing and final interpretation, it should have a salutary effect. With our highly developed egocentricity we too frequently look upon any misunderstanding with Latin American countries as concerning only ourselves and them. The natural result is an over-indulgence in self-criticism whenever we assert our rights or insist upon our policies. Some of us are prone to see such action by the United States as bullying and domineering. In

the wider view which Professor Rippy gives us, there is less room for this sort of criticism. The Monroe Doctrine loses its one-sided appearance as a purely American affair and assumes its proper proportions in the larger field of world politics. The policies of the United States appear in their real significance as related to the policies of European countries instead of as unwarranted interference in the affairs of weaker neighbors.

One has a feeling of regret that in a work of such high quality and balanced judgment the author should permit himself occasional denunciations of American actions in terms suggestive of the most irresponsible radical journalism. A minor criticism may be directed at his practice of inserting in quoted passages words which change the direct into indirect quotation. Either form alone would be quite acceptable, but the two together are confusing.

Professor Haring, approaching the same field from another angle, contributes a most illuminating analysis of Latin American opinion of the United States. While avoiding the less measured tone of criticism of Professor Rippy on American policy, he permits himself an occasional fling by way of flourish at the end of a chapter. The main trend of his survey, however, goes far to support Professor Rippy's implication of European countries in the Latin American problem. Professor Haring has stated the elements of this problem in relation to the ideal of Pan-Americanism in a manner which can hardly be bettered: "An appreciation of the desirability of close relations, economic and cultural, with the northern republic, into whose orbit they are drawn whether they will or no; a desire for financial assistance, yet a half-concealed fear that American loans and industrial investment will be followed by political influence and pressure, endangering their national independence; foreign, European interests, jealous of American hegemony in the Western hemisphere, and ambitious to supplant it by an international grouping which may serve the political and economic purposes of certain Latin states in Europe; lack of mutual understanding due to ignorance or provincialism, to paucity of intercommunications, or to misrepresentation by irresponsible journalists; such are the problems to be solved or conditions to be combatted in all countries of Latin America if a genuine Pan-America is to be achieved."

The greatest divergence between these two authors is in regard to Mexico. Professor Rippy is inclined to look upon Mexico as an abused innocent. Professor Haring relates with some detail the widespread

Mexican activities directed against the United States. He shows how Mexican diplomacy has been unceasingly active in its efforts to increase Latin-American hostility toward this country and to form a Latin-American entente directed against us. There has probably been some soft-peddling in this regard, but in the highly unstable state of affairs in Mexico there is no assurance that the attack may not be renewed at any time.

The absence of an index to Professor Haring's book is regrettable, though this is a matter for which the publisher is probably more to blame than the author.

*Adventures in American Diplomacy* will have a much wider appeal than Professor Dennis' work on Soviet foreign policy. The form of presentation in the new volume has much to commend it. The story of each "adventure" is told in a style calculated to interest even the lay reader. The absence of the lengthy foot-notes and unending quotations so common in works on diplomacy is a pleasant relief. Yet at the end of each chapter are citations in sufficient amplitude to satisfy the most exacting student. Following these are chapter appendices in which the important documents not elsewhere available are printed in full. The division of the discussion into twenty topics makes it somewhat difficult to see the picture of the decade as a whole. Yet it has the merit of clarifying the specific issues in a degree which would not be possible in a continuous narrative.

It is doubtful if even the decade of the World War and its aftermath can hold greater interest for the student of American diplomacy than that which Professor Dennis covers in this book. Surely no other decade since the early days of the Republic can approach it in interest. For it includes the years in which the United States first began to feel its responsibility as a world power, first began to play the important rôle in world politics which it is destined to play for many decades to come.

And Professor Dennis does it full justice. We see the hesitant and sometimes blundering efforts of McKinley and his colorless secretaries of state give way to the intelligent and confident diplomacy of John Hay and to the joyous, though sometimes equally blundering, activities of Theodore Roosevelt. Issues crowded hard upon each other. All but two or three of the chapters describe major diplomatic efforts. South America and the Monroe Doctrine, the British Empire in Europe, the Pacific and China vie with the Canal, Russia, Hawaii, and Morocco for a place in the picture. They were strenuous days in

which American diplomacy was preparing itself all too hurriedly for the greater strain which began in 1914. Professor Dennis cannot be too highly commended for the diligence with which he has searched the private papers of Hay, Olney, and Roosevelt for new light on these times. His fairness of presentation and balanced judgment are equally commendable. It will be long before this book is supplanted as an aid to teachers and students of American diplomacy.

HENRY KITTREDGE NORTON.

*Irrington-on-Hudson, N. Y.*

*Responsible Government in the Dominions.* BY ARTHUR BERRIEDALE KEITH. (New York: Oxford University Press. 1928. Two volumes. Pp. lxiv, xxvi, 1339.)

*Great Britain and the Dominions: Lectures on the Harris Foundation, 1927.* (Chicago: University of Chicago Press. 1928. Pp. 511.)

This is officially the second edition of a famous book; in reality it is the third. *Responsible Government in the Dominions* was first published in 1909. So successful was that single volume of modest dimensions that in 1912 it was enlarged to three, closely packed with valuable data on Dominion constitutional practice and theory. And now, fifteen years later, a second edition is made of the three volumes published in 1912.

The new edition is a decided improvement over the earlier one. It is some three hundred pages less in extent, yet conveys much more information. Nothing of value in the old edition has been omitted. On the other hand, all the significant and varied constitutional changes of the war and post-war period have been included. And this economy of space has been wisely secured by leaving to the Blue Books, where they properly belong, many speeches and debates.

It may safely be said in regard to this work that for all large libraries it is indispensable. There is nothing at present available which is comparable to Mr. Keith's book. Elsewhere we may find the constitutional history of the individual Dominions; but nowhere else, to the knowledge of this reviewer, may we discover such an exhaustive analysis of the powers and the status of royal governors, the working of the cabinet system in its many varied forms throughout the Empire, the legal theory and actual practice which characterize the upper and lower houses of Dominion parliaments.

Mr. Keith's book is not easy reading. As was pointed out in the review of the first edition, his method of presentation might be more felicitous. He begins a typical chapter with a few brief introductory remarks, states his conclusions, and follows them by a great wealth of cases and quotations. Whereupon his chapters abruptly end. It would have been a happier method to leave the conclusions to the end, or at least to restate them. In so far as certain of his cases appear mutually contradictory, one believes that had this latter procedure been adopted the conclusions of the author would have been less dogmatically defined.

For Mr. Keith is over-dogmatic and at times given to a somewhat ultra-theoretical view in regard to many constitutional functions. A case in point may be found on pages 156-157, where he argues that "there is a vital distinction between the position of the king and the governor." To prove this, he adduces a wealth of illustrations. But since he is honest he also brings in evidence on the other side. This, according to his wont, he simply denies as valid. Mr. Harcourt, he states, "completely misunderstood" the functions of the governor. But Mr. Harcourt was secretary of state for the colonies. It seems to us that his *obita dicta* should carry weight. And although it may not be denied that in certain minor aspects the position of governor differs from that of the sovereign, we think it true that in the main their constitutional function is rapidly becoming identical.

It seems unfair, moreover, to write as did the former reviewer, the late Baron Korff, of "the overbearing tone of the author." Mr. Keith does not mince his words, and at times they are more vigorous than the occasion warrants; but his verbal blows are always down-right, never sneering and indirect. It is not the harshness of his language, but the undue emphasis given to legalisms, with which we would quarrel.

The legal and constitutional expert, it seems to us, frequently falls short of being a good historian. He is over apt to emphasize the law and to underestimate popular trends and feelings which tend to set legal precedents to one side. I do not think it just to call Mr. Keith an imperialist, as did Baron Korff. His vigorous and somewhat prejudiced attack on the imperial federation movement puts him in an entirely different category. On the other hand, he does miss the Dominion point of view, which, as far as Canada is concerned, we may find better expressed in J. S. Ewart's *Kingdom Papers* and in J. W.

Dafoe's lectures on Canada, which appear in *Great Britain and the Dominions*.

Mr. Keith is quite certain that the conference of 1926 did not put the Dominions on an equal status with the mother country, although it was expressly stated by the conference that they are. And to emphasize this fact the words were put in italics. Mr. Keith regards the use of italics as very unfortunate. We may agree with him that from a purely legal point of view this was unfortunate. But life is more than food and raiment; and politics is a deeper and more subtle thing than law and logic. This, Mr. Keith, like other legal experts, is not apt to see.

These criticisms, however, detract but slightly from the value of a great and learned work. That Mr. Keith's deductions do not always follow from his facts does not militate against the usefulness of the latter. The facts are here, by the thousand, in serried ranks and in orderly array. If the student of the Empire were to select for his reading but one book, *Responsible Government in the Dominions* should be his choice.

The University of Chicago is to be congratulated on the series of lectures delivered on the Harris Foundation and published under the title of *Great Britain and the Dominions*. As is inevitable when seven different men lecture on thirteen correlated topics, there is great disparity of treatment and much overlapping. But the surprising thing about this book is that there is not more.

The point of view of the majority of the writers is fortunately more analytical than descriptive. For the most part, statistics are left to their proper depository—the encyclopedia. The lectures are broad in scope, and taken as a whole they provide a convenient summary of Dominion problems.

The best in the series are those given by Mr. John W. Dafoe, of the *Manitoba Free Press*, on the problems of Canada. The writer, in this instance, seems somewhat more independent in his point of view than a number of the others, possibly because he is not a governmental official, associated with the maintenance of the status quo. Mr. Dafoe's analysis of the difficulties which confront the Maritime Provinces is particularly keen, his recognition of the uncertainty of future imperial coördination especially clear. The reader will find here perhaps the best brief exposition of Canadian nationalism to be met with anywhere.



The seeming reluctance, on the other hand, of New Zealand to accept complete equality with the mother country in the matter of foreign relations, and the somewhat intermediate position taken by Australia between the Canadian and the New Zealand point of view are well brought out by the lecturers representing the Anzac Dominions.

WALTER PHELPS HALL.

*Princeton University.*

*La Réforme de l'État en Belgique.* BY H. SPEYER. (Brussels: Établissements Émile Bruylant. 1927. Pp. 146.)

In this brief but comprehensive work, published under the auspices of the Institut de Sociologie Solvay, Professor Speyer has sought primarily to produce something of practical value to his country. In Belgium, as in all the countries of continental Europe, the parliamentary system of government is for the moment the subject of drastic criticism and violent attack. Professor Speyer defends the fundamentals of that system as it exists in his own country and at the same time proposes remedies for some of its incidental defects. In its home land this book has been recognized as timely. Its clarity, its moderation, and its constructive reality have made a serious impression on Belgian opinion. For us in America, it presents not only interesting sidelights on Belgian institutions, but, what is of much wider appeal, a liberal and scholarly European's reaction to the current criticism of parliamentarism.

The first chapter maintains the principle of popular majority rule as against the idea of the representation of interests. The author dwells impressively on the fact that the distribution of influence between "interests" must, in the very nature of things, be arbitrary. He points out that "the man of one interest exists only in the imagination of sociologists." He raises the very pertinent question, why, during thirty years of proportional representation, which opens the way certainly to any "interests" to put its representatives in the Chamber, no attempt of the sort has ever been made. And he caps his argument with a reference to the fact that in the elections of supplementary city councillors, half by the workers and half by the chiefs of industry, and of bodies like the *conseils de l'industrie et du travail* in which representation is based on "interests," party lines have been quite as rigorously drawn as in other elections.

In the second chapter, the author takes up the general subject of the parliamentary system as compared with other methods of naming and controlling the executive. He spends a few pages on the presidential system of the United States. It is interesting to note that one of his principal reasons for rejecting our example is the position of authority in the Wilson administration occupied by a private citizen, Colonel House. Here is added evidence of the tremendous impression made abroad by the publication of the House papers. If it were not for the fact that the Colonel's position was as exceptional as it was anomalous, we might ourselves have grave reason for distrust of our constitutional system. Professor Speyer lays great stress on the success of the "parliamentary" states in the war as compared with the inability of their autocratic opponents to evolve effective leadership. To those who would retort that the Allies succeeded by the sacrifice of parliamentary principles through the devolution of dictatorial powers to individuals, he would reply that Lloyd George and Clemenceau were *par excellence* products of the parliamentary régime.

The third chapter is devoted largely to suggested reforms of parliamentary procedure in Belgium. Professor Speyer speaks here from experience as a former senator and a member of the *Conseil de Législation*. He recognizes that parliament "bends under its load." Theoretically he favors the abolition of the Senate and the creation of a series of special councils named by the Chamber and subordinate to it, for the careful preparation of all detailed technical legislation. He emphatically rejects, as relative failures, the French National Economic Council and the German Economic Council. In his opinion, the rescue of parliaments from legislative congestion must be through organs subordinate to them, not through independent authorities.

A change so radical being at present impossible, he suggests as immediate remedies a more habitual consultation of the *Conseil de Législation* on all legal questions; a parliamentary counsel to perfect the form of measures; the appearance before committees of the chambers of members of the administration; the prohibition of the reading of written *mémoires* in the course of debate; longer sittings of the chambers; limitation of the right to propose amendments after debate has begun; the more frequent presence in the chambers of departmental officials below the rank of minister; the devolution of subordinate powers of legislation to the administration. Each of these suggestions is accompanied by pertinent, sometimes amusing, illus-

trations of present practice. In this portion of the book the student of Belgian government will find the ripe conclusions of a penetrating observer, exceptionally favored by his experience as a lawyer, legislator, and publicist. No one can read it without a better understanding of the Belgian parliament and a keener appreciation of the essential similarity of legislative problems the world over.

THOMAS H. REED.

*University of Michigan.*

*Principles of Public Administration.* BY W. F. WILLOUGHBY. (Baltimore: The Johns Hopkins Press. 1927. Pp. 720.)

A rapidly increasing body of material pertaining to public administration has heretofore offered no general work purporting to cover the entire field. Much already produced has, moreover, been of a legal, historical, or descriptive character, necessary as a ground-work to any field aspiring to scientific status, but of limited use to the active administrator and realistic-minded student eager to see *how* the thing should be done.

Mr. Willoughby has responded. With a work designed to show the essential problems involved in overhead administration, organization, personnel, *matériel*, and finance, he has coupled elaborate analysis and constructive suggestion. The broader phases occupy about one-third of the volume. They include the place of the legislature as a directing agency, the functions of the executive as a general manager, and the appropriate use of various types of bureaus as effective administrative controls. The wider problems of structure, as well as those concerning departmental organization, staff agencies, and field establishments are presented in six highly suggestive chapters which contain, perhaps, the best available material on the subject. A discussion of the position of revenue-producing enterprises, the organization and functions of advisory councils, and the use of administrative codes, service monographs, manuals, charts, reports, and official gazettes concludes the general treatment.

The remainder of the volume is in many ways an elaboration—a detailed discussion of factors intimately related to all administrative problems. Eleven chapters (some one hundred and seventy pages) treat the various phases of public personnel: basic principles, classification and standardization, training, recruitment, promotion, dismissal, retirement, and employees' organizations. Three chapters are

given to the problems of *matériel* and supply, and a final part (well over one-third of the book) to finance. Here is extensive information relating to the formulation, authorization, and execution of the budget, as well as general consideration of the collection, custody, and disbursement of public funds, accounting, reporting, and the preparation of financial data.

The work is neither legal nor historical. In a formal way, it is hardly descriptive. Such delineation of administrative agencies as is necessary is often so interwoven with analysis as distinctly to subordinate it to the principle under discussion. Conflicting practices are presented, approved procedures are emphasized, and summaries are frequent. There is little attempt to introduce European comparisons. The methods of the American state are given subordinate emphasis, and municipal problems hardly more than occasional reference. It is American federal government that dominates the work. A critical bibliography is contained in some fifty pages of the appendix.

The book presents the principles of public administration as a single unit. It proceeds on the basis that while scientific precision in the extreme sense can hardly be premised in this field, a systematic treatment of certain fundamental principles is quite possible—principles that are at least sufficiently fixed to require their observance if the ends of efficient organization are to be served. While much that the work contains has appeared before (Mr. Willoughby has himself presented some of it in other forms), the systematic presentation, the suggestive topics for further detailed study, and the many constructive proposals have to a large degree broken new ground.

JOHN F. SLY.

*Harvard University.*

*The Distribution of Power to Regulate Interstate Carriers between the Nation and the States.* BY GEORGE G. REYNOLDS. (New York: Columbia University Press. 1928. Pp. 434. Studies in History, Economics, and Public Law, No. 295.)

This volume deals clearly and accurately with the most important single aspect of interstate commerce, i.e., the regulation of interstate carriers. Following an introductory chapter on the constitutional grant of federal powers, the author analyzes the decisions of the United States Supreme Court into three chronological groups, 1789–1887, 1887–1920,

1920-1927, with the Interstate Commerce Act of 1887 and the Transportation Act of 1920 as the lines of division. The cases decided at the 1927 term of the Supreme Court are included. The analysis of cases is followed by a helpful review of federal legislation regulating carriers engaged in interstate commerce, and of the manner in which such legislation has reduced the sphere of state action. The volume concludes with a critical chapter on "the present distribution of power and proposed changes."

In the discussion of cases the chronological division makes some difficulty for the reader, although he is usually able to follow the same topic through from one period to another. Yet the chronological arrangement is justified by the results, and in a new edition the reader's difficulty can be met by chapter subdivisions uniform for three of the chapters. The author refuses to indulge in technical refinements in order to distinguish and harmonize the authorities. The purpose of the volume is to show how and why national power has grown and the nature of present problems presented by such growth, not to harmonize decisions often incapable of reconciliation. Economic influences appear always to be in the author's mind, but are properly subordinated to the discussion of legal issues.

Only occasionally is there failure to consider some case that might have aided the discussion. *United States v. Hill*, 248 U. S. 420 (1919), would have been helpful in connection with federal legislation in aid of state prohibition; and *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149 (1920), would have aided in determining where the United States Supreme Court draws the line separating permissible congressional legislation in aid of state policy from a forbidden delegation of national power to the states. *Terral v. Burke Construction Co.*, 257 U. S. 529 (1922), would have lent additional support to the author's discussion of unconstitutional conditions upon the doing of domestic business within a state. The author would also have found it useful to consult some of the articles in law journals discussing the problems of interstate carriers.

There is little to criticize in the author's presentation. He tends in places to use a time-worn phrase in a misleading manner, as when he speaks on page 339 of the "reserved power of the states to regulate interstate railroads for the protection of the safety of passengers and employees," although his discussion throughout the volume shows that he is fully aware that there are no reserved powers of states as against the authorized exercise of federal power.

The author was probably deliberate in omitting any discussion of the judicial machinery through which carriers and their rates are largely controlled. It would perhaps require another volume to consider the remedies of carriers in state and federal courts; the attitude of the United States Supreme Court toward rate-making by the Interstate Commerce Commission; the struggle against control over state actions by federal courts as reflected in what is now Section 266 of the Federal Judicial Code; and the present criticism of Section 266 as inadequate. The relation of the courts to the rates of carriers forms an interesting story in itself; and the problem of distribution of power cannot be fully understood without reference to the fact that federal governmental action is subject to check by but one judicial system, whereas a person seeking relief from state action has a choice of either state or federal court.

The author's concluding chapter is of special value in showing the time now required to obtain a decision of the Interstate Commerce Commission, and in its discussion of the movement for devolution of authority through the use of state commissions as local agencies of the national government. Since the publication of Dr. Reynolds' volume a report has been submitted to the Interstate Commerce Commission formally recommending legislation under which the state commissions would be permitted to serve as federal agencies, subject to the supervision of the Interstate Commerce Commission, in the regulation of interstate motor transportation. (Interstate Commerce Commission. Docket No. 18,300. Motor Bus and Motor Truck Operation). This and earlier proposals of the same character bear out the author's view that centralization of control may go too far. The interstate motor vehicle problem is relatively new, but some federal action is becoming increasingly necessary. The problem of regulating interstate power transmission is important, but perhaps not yet urgent. An overburdened national agency with a crowded docket and delayed decisions must in some manner be adjusted to these new problems in which local interests are proportionately more important than in the heretofore major problem of the interstate railroad.

This volume makes a distinct contribution in its discussion of federal legislation and in its clear statement of present problems. It should prove of value both to the student and to the practicing lawyer. Should it appear in a new edition, the reviewer hopes that it may receive a less cumbersome title.

WALTER F. DODD.

*Yale University Law School.*

*Government and Business.* BY EARL WILLIS CRECRAFT. (New York: World Book Company. 1928. Pp. xi, 508.)

Until quite recently, treatises on the relation of government to business have been few in number. Excellent books by Professors Swenson, Ely, and Orth have dealt with various phases of the field. There have been several works on public-utility law and an occasional brief by some earnest advocate of less government in business. Dr. Crecraft's work possesses certain unique features. In the first half it presents the economic rôle of government, including the various services which national, state, and local authorities perform in this field and their influence on business. There are chapters on government activities in the fields of consumption, production, exchange, and distribution, and on the relation of public finance, the public service, political parties, legislation, and courts on one hand and business on the other.

In the second half of the work the view is reversed. The reader is placed on the standpoint of business and views government regulation of each of the more important business fields. There are chapters on transportation, communication, banking, insurance, marketing, brokerage, sales, labor, private monopolies on the one hand and government on the other. It is in this latter half that Dr. Crecraft makes his greatest contribution. He offers the most complete and accurate analysis of these business fields and the reasons for the regulation of each which has thus far been presented. This analysis shows a remarkable sympathy with the views and interests of business groups on the one side, with the consumer on the other, and with the general social viewpoint as a synthesizing influence.

The presentation of such an immense amount of material in highly condensed form has involved an amazing amount of reading in widely diversified fields. Such a review necessarily must be a general descriptive sketch rather than an intensive discussion of principles and policies. However, this latter need is not left unsatisfied.

Part five, consisting of four chapters, deals with the broader aspects of statecraft. Here the author has presented the philosophy which he advocates as the foundation for government regulation. The functions of government and business overlap and are interdependent. Centralized economic power means centralized political power. An excess of one and its remedy must be reflected in the other. Political decentralization waits on economic decentralization. The preservation of private property, the establishment of political and economic justice,

liberty, equality, and private initiative present conflicting forces, many of which are destructive. If these functions and rights are to be fulfilled and preserved, respectively, statecraft must be based on a comprehension of all of them. Statecraft, or in the higher sense "politics," thus has as one of its tasks the harmonizing of economic and political forces. This must be done, not by allowing business organizations to take over the functions of government, but by maintaining in the background a possibility, if not the actuality, of government regulation, thereby forcing business to solve its own problems and observe the principles of social welfare or submit to government intervention.

No one but a political scientist widely read in economic lore and in the current literature of business could have contributed this remarkable survey. It is replete with allusions not only to political principles and philosophy but to the latest data on the details of business activity. Dr. Crecraft has described so lucidly and succinctly that the reader sees in a bird's eye view a vast field arranged in due perspective and proportion. In the maze of detail there is always a guiding thread of continuity.

JAMES T. YOUNG.

*University of Pennsylvania.*

*Communism.* BY HAROLD J. LASKI. (New York: Henry Holt and Company. 1927. Pp. 254.)

*Industry and Politics.* BY SIR ALFRED MOND. (London: The Macmillan Company. 1927. Pp. 337.)

*The Breakdown of Socialism.* BY ARTHUR SHADWELL. (Boston: Little, Brown and Company. 1927. Pp. 272.)

Mr. Laski traces in this little volume the evolution of the thought and practice of modern communism. The theory of communism is declared to be an amalgam of three main facets of thought, namely, (1) the materialistic interpretation of history, which declares that the activities and ideologies of groups are determined by what is to their economic advantage. The communists draw from this the moral that no dominant economic class ever voluntarily cedes its power merely because of general ideas of justice and humanitarianism. Militant action by the proletariat is therefore held necessary to protect its interests. As faithful followers of the Hegelianism of Marx, they moreover believe that the processes of production, by crushing



out the middle class, are inevitably swelling the ranks of the proletariat and separating society into two sharply defined classes. The alleged growing ranks of the industrial reserve army, the increasing severity of business crises, and the supposed lowering of real wages are all relied upon to drive the working classes on to a final and triumphant revolt.

(2) The Marxian theory of value, which makes value consist only of units of labor as they are embodied in commodities. Since fewer units of labor are needed to maintain the workers than they give forth in production, the difference, in surplus-value, is absorbed by the capitalists as a toll upon the workers. Mr. Laski touches briefly upon the great contradiction in Marxian theory which arises from the fact that since constant capital is supposed merely to embody past labor, it cannot in the Marxian system make any further contribution to value. This leads to the patently absurd conclusion that profits are derived solely from variable capital, and that the greater the proportion of variable capital in an industry the higher will be the average rate of interest. But the author does not adequately point out how in Marx's mind the theory of the inevitability of the final cataclysm which was to devour capitalism was but the logical derivative of his theory of value.

(3) The third element is the communistic theory of the state. In a society where surplus income and the direction of industry are narrowly concentrated, the capitalists, through their control over the agencies of propaganda and over men's jobs, are said to be able to prevent socialism from being attained through the means of political democracy. Even were the workers ultimately to be victorious at the polls, the capitalists, it is held, would refuse to obey the popular mandate, and would instead organize a fascist movement to protect their property by force. The communists believe, therefore, that the issue must ultimately be decided by arms, and they regard with scorn the social pacifism of such socialistic leaders as Kautsky and MacDonald. Once in power, the communists believe that they can use the state as an agency to repress and intimidate the bourgeoisie from again attaining power and to socialize industry.

Several slips in the jaunty air of omniscience should perhaps be noted. Thus the Stockholm Conference was projected by the Social Democrats *before* the Bolshevik revolution of October, 1917, and not afterwards, as the author (pp. 43-44) implies. In his anxiety to score against the communists, Mr. Laski grossly exaggerates the restora-

tion of private enterprise which has developed under the Soviet government. Instead of private trading being "restored upon something approaching its pre-war scale" (p. 48), the truth of the matter is that it comprised in 1926-27 but ten per cent of wholesale trade and only thirty per cent of the retail turnover. The statement that the large industries "resemble in their working and relation to the state nothing so much as the railway companies of England and America" is a ludicrous misrendering of reality. Such companies in the English-speaking world are not owned by the state, as is the case with 94 per cent of Russian factory production and all the public utilities. Nor is the state controlled by the militant workers as there. Nor do the trade-unions in England and America exercise any large fraction of the influence which the Russian unions wield over labor protection and industrial production.

The two remaining books are by advocates of individualism who believe that socialism has been disproved by post-war experience. Dr. Shadwell, however, seems to have under-estimated the value of the housing projects of the Viennese socialists. Sir Alfred Mond's volume gives an insight into the considerations which are leading many British Liberals to desert their party for Conservatism in order to head off socialism.

PAUL H. DOUGLAS.

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*Political Pluralism: A Study in Modern Political Theory.* BY KUNG CHUAN HSIAO. (New York: Harcourt, Brace and Company. 1927. Pp. viii, 271.)

Dr. Hsiao's book is valuable more for the thoroughness of the test both of logic and of practice to which he has submitted the doctrine of political pluralism than for the novelty of the conclusions he has reached. Until the appearance of his study, there existed, to the reviewer's knowledge, no such comprehensive investigation of this most conspicuous, if not altogether most significant, development of modern political thought, and there was room therefore for a volume devoted entirely to it. Dr. Hsiao's conclusions furnish strong support to those who, while acknowledging the (in some respects) very great contributions that the pluralistic theory has made to political thinking, still fail to find in it the essential pluralism claimed for it, and therefore the annihilation of the traditional doctrine of state sovereignty. Dr. Hsiao finds among pluralistic writers, moreover, the same confusions

of thought that have been pointed out by other critics, the same misjudgment of the older writers in attributing to them the claim for the state of "immunity from the moral law" and "omnipotence over all the relations and activities of men," and the same failure to differentiate the strictly legal from other phenomena, moral or religious, social or political.

Implicit in his comments in these earlier chapters, and set forth in greater detail in the last chapter of the book, is his own contribution—his conception of the state, that is, as an "ethical ideal." In opposition, on the one hand, to what he calls the "abstract monism" of the traditional theory, especially as formulated by the analytical jurists, and on the other, to what he finds to be the falsely named and therefore "abstract" pluralism of the recent critics of the traditional theory, he offers his doctrine of "concrete monism." According to this, the state is "the highest [and] the most inclusive of all social institutions" (p. 210); "the representation of the highest possible realization of man in his social capacity" (pp. 142-3); "the complete unity of the social whole" (p. 144). And sovereignty is, accordingly, "ultimate power" (p. 139), it is true, but ultimate power, if I understand him rightly, not in the form of power as such (Dr. Hsiao would seem to repudiate any necessary connection between force and sovereignty), but of an enlightened and a truly "free" general will. "Real sovereignty," he declares, "must surely be much wider, more profound, and more satisfying than the oppressive 'Mortal God' of the Leviathan or the jejune 'human superior' of the jurisprudence" (p. 239). "The Commonwealth resulting from the successful coördination of all social forces will ultimately be a comprehensive, all-satisfying unity . . . a community with splendor and sovereign force greater than any commonwealth that has ever been sustained by men" (p. 257).

The book is marked by close thinking and sustained reasoning throughout, and by a gratifying impartiality. The contributions that the pluralists have made to political thinking are clearly set forth and acknowledged. Indeed, Dr. Hsiao finds in the ultimate unity he perceives in their systems the key-note in many ways to his own point of view. To the reviewer, however, in his attempt to broaden the political concept and to give it concrete reality, he tends to go too far to the other extreme and to slip from the abstract legal conception immediately over to the social and the ethical, leaving one wondering what, after all, his definition of state and of sovereignty, as they actually exist, would be.

The appendices are useful and interesting, and the bibliography extensive and well arranged. An index would, however, have been a valuable addition, and it is believed that the reading of the book would also have been facilitated and the argument made to flow more consecutively by the placing of Chapter VII immediately after Chapter V, as part of the discussion of the various phases of pluralistic thinking, before the general estimate of the theory should have been attempted. In the interest of strict accuracy, if nothing more, attention should perhaps be called, in closing, to a slight error in the first footnote on page 115, arising no doubt from the presumption, even in this twentieth century, that politics and things political are necessarily of the masculine gender.

ELLEN DEBORAH ELLIS.

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*Société des Nations et Problème de la Paix.* BY MIROSLAS GONSIOROWSKI. (Paris: Rousseau. 1927. Two volumes. Pp. 508, 547.)

In these two volumes Dr. Gonsiorowski provides a comprehensive discussion of the problem of world peace as envisaged chiefly from the point of view of the League of Nations. He begins with a discussion of the social value of war and a study of the place of the individual in the state and of both in the international community, under the principles and rules of international law. There is little here to surprise the student who is familiar with current thought on these problems, although the reader has at all times a sense that the author is not merely repeating accepted views without reflection, and that he is alert and critical of many of those views without being disposed to reject them for more radical conclusions.

There follows an extended study of international organization in the political and judicial spheres. Here the author examines "the idea of international organization in the past" as a preface to a study of "international organization according to the Covenant of the League of Nations." To the latter study is added an examination of League administration in the Saar and at Danzig and a rather full treatment of the evolution of international judicial organization and practice as culminating in the Permanent Court of International Justice. To the reviewer it seems that here, as elsewhere, there is too much preoccupation with the League, or rather with the theory of the League, and too little attention to general international organization and action and to actual League activities, such as the conferences and adminis-

trative activities of the Secretariat. At one point (I, 137) there occurs an unduly flattering picture of the Pan-American Union.

In his second volume the author discusses certain preliminary guarantees of peace, given by League members, in regard to minorities, mandates, social and economic relations, armaments, treaties, and security. He completes the work with a searching discussion of the problem of pacific settlement of international disputes. And here there is much more of piercing and realistic consideration of the actual situation. There is still too much legal theory, in the judgment of the reviewer, and too much formal logical analysis. It may be true (II, 424) that the development of the League will culminate in the provision of effective sanctions for every case of violation of legal obligations by members. But this may be a long way in the future.

In short, we have an ideological treatment of the League and the problem of peace which is often suggestive, never heretical, and always confident ("*les voies de l'évolution de l'humanité mènent fatalement à la paix du monde*", II, 525). There is some lack of familiarity with American studies of these problems; and there is altogether too little of a sense of realism and relativism.

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## BRIEFER NOTICES

### AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The presidential year has given an impetus to the publication of a number of books dealing with possible candidates, national questions, former presidents, and earlier campaigns. *American Presidents*, by Thomas F. Moran (Crowell, pp. xii, 318), contains brief sketches of the presidents from Washington to Coolidge and closes with an account of some of the "great men" who have not been chosen as presidents, such as Hamilton, Clay, Webster, John Hay, and Elihu Root, and with an interesting chapter on "the ethics of the presidential campaign." *Presidential Years, 1787-1860*, by Meade Minnegerode (Putnam, pp. viii, 396), is a colorful and extremely readable story of the elections of 1789, 1796, 1800, 1824, and 1828, and of the campaigns from 1840 to 1860 inclusive. *As I Knew Them: Presidents and Politics from Grant to Coolidge* (Harper, pp. 571), by Henry L. Stoddard, editor and publisher of the New York *Evening Mail*, is not just "another" book of political gossip. It is rather a political history of

the United States since the days of Reconstruction, written by one who not only knew personally the actors in the drama and who was near to the center of the stage, but who also interprets the actions of the various leaders in a fair-minded manner and measures their influence on American government. The book is packed full of illustrative material useful for teachers of American government. *Drifting Sands of Party Politics*, by Oscar W. Underwood (Century, pp. viii, 422), is in large measure an analysis of the important legislation enacted by Congress since the Spanish-American war in which the author points out the forces which have influenced such legislation and indicates the trend of federal legislation and administration. The former senator from Alabama is critical of the movement toward federal centralization at the expense of the states and of the increase in the powers of administrative boards, commissions, and bureaus at the expense of Congress. He also shows by concrete examples that legislation is influenced by propaganda and too often reflects the wishes of organized groups, blocs, and organizations rather than the desire of any large number of the people. *The Challenge: Liquor and Lawlessness versus Constitutional Government*, by William G. McAdoo (pp. x, 305), also published by the Century Company, contains the views of another prominent member of the Democratic party on government, with particular reference to prohibition enforcement. In contrast with Mr. Underwood, the author is inclined to favor a larger measure of governmental regulation and nationalism. Will Irwin's *Herbert Hoover* (Century, pp. v, 315) gives us the first complete biography of the Republican candidate for the presidency. About two-thirds of the book is devoted to an account of Mr. Hoover's services during the war and to his constructive work in the Department of Commerce. *Progressive Democracy*, edited by Henry Moskowitz (Harcourt, Brace, pp. xiii, 392), is a collection of the addresses and state papers of Alfred E. Smith, Democratic candidate for the presidency. Although intended as a campaign document, the volume has a number of articles which are of great interest to students of state government on topics such as the executive budget, pay-as-you-go versus bonds for permanent public improvements, the port authority of New York, a state housing policy, the need of county health units, executive clemency, and water-power policy.

The third volume of the *Correspondence of Andrew Jackson* (Carnegie Institution of Washington, pp. xxxiv, 464) covers the years

1820 to 1828. Both the editing and the mechanical execution maintain the high standards set by the two earlier volumes, and the text increases in interest for the political scientist with the presidential campaigns of 1824 and 1828. Jackson's development from a hot-headed, outspoken soldier into a wary master of political strategy gives unity to the volume. Of the campaign of 1824, one may well ask (p. viii), "How did it happen that a man who ran amuck in so many of his other affairs was carried through this most complicated of all without a flaw in his conduct of it?" Before his lamented death on January 27, the editor, Professor John Spencer Bassett, had completed the text and annotations for the three remaining volumes of the series.

A fifth edition of Dr. Charles A. Beard's excellent text-book, *American Government and Politics*, has been issued by the Macmillan Company (pp. x, 820). Besides bringing matters of detail down to date, two important changes have been made. The chapter on political parties has been rewritten so as to bring out the "essential continuity of American political issues from the administration of Washington to our own time," and an epilogue has been added at the end of the book dealing with the question of how citizens can best play their part in "the development of American political society." In this latter portion Dr. Beard points out the way in which the citizen who finds "the limitations of government service and political, business, and civic associations irksome" has his place in the scheme of politics as well as the politician, the officeholder, the technical employee, or the member of a party or other active organization.

A third revised edition of the well-known text-book, *Introduction to American Government*, by Frederic A. Ogg and P. Orman Ray, has been issued by the Century Company. As heretofore, the work is available in both a complete edition (pp. 1,012) and a "national edition" (pp. 673), the latter omitting the treatment of state and local government. The volume has been brought strictly down to date, the discussion of a considerable number of topics has been rewritten, and some new material has been added. There are additional charts and diagrams, and the bibliographical apparatus has been amplified.

A second edition of James Parker Hall's *Illustrative Cases on Constitutional Law* (pp. x, 586), revised and enlarged by H. C. Black, has been brought out by the West Publishing Company. The book has been brought down to date and made more useful by the addition

of recent leading cases such as *Dillon v. Gloss*, *Adkins v. Children's Hospital*, *Massachusetts v. Mellon*, *ex Parte Grossman*, *Bailey v. Drexel Furniture Company*, etc. One is somewhat disappointed to find that the case of *Myers v. the United States* has not been included. Unlike most of the other case-books, Dean Hall's compilation contains a number of state cases, especially on such subjects as the separation of powers, state executive power, state judicial power, the police power, labor legislation, and taxation. The volume contains a total of about 160 cases.

*Lectures on Legal Topics, 1922-1923* (Macmillan, pp. viii, 393) is volume four of the addresses delivered before the Bar Association of the City of New York by various authorities. While the bulk of the work contains purely legal discussions, several of the addresses fall within the realm of the general student of government. This is especially true of the three addresses by Dean Roscoe Pound on "The Theory of Judicial Decision" (74 pages); "Some Aspects of the Problem of Law Simplification," by Justice Harlan F. Stone; "The United States Supreme Court," by James M. Beck; and "Why the Right of Local Self-Government is Essential to the Preservation of Civil Liberty," by William L. Marbury.

*The Report of the State Tax Commission* of New York for 1926 (pp. 553) contains an interesting explanation of the reasons why the commission of that commonwealth, unlike tax authorities in some other states, opposes the abolition of the federal inheritance tax. The commission is of the opinion that without the federal tax the death taxes of the states would be jeopardized, that repeal would encourage tax dodging, that the present national law through its credit provision protects the state against unwarranted interference by other states, and that an inheritance tax should be a part of any well balanced tax system.

The New York *Sun* has published a booklet on *Facts About the Government* (pp. 134) containing well written and pithy one-page notes on the various offices, departments, bureaus, commissions, agencies, and activities of the federal government, such as the Senate, the vice-president, the speaker, congressional floor leaders, reporters of debates, the Library of Congress, air mail service, budget, federal-aid highways, tea-tasters in the bureau of chemistry, forest research laboratories, and so on.



*The Practice of Politics* (pp. 36), by Raymond Moley, is a booklet published by the American Library Association providing an outline for the study of politics through the reading of such biographies as Bowers' *Jefferson and Hamilton*, Croly's *Life of Mark Hanna*, Roosevelt's *Autobiography*, etc.

The Bar Association of St. Louis has published the speeches and remarks at the testimonial dinner given Judge Walter Henry Sanborn, senior United States circuit judge, after thirty-five years of service on the bench. The book (pp. 180) throws much interesting light on the part played by a circuit judge in the development of American law and is a valuable contribution to the history of the federal judiciary.

The Bobbs-Merrill Company has published a booklet on *The Constitution of the United States: its History and Meaning*, by Richard Wasson (pp. 135), containing the text of the federal constitution with brief explanations after each article or section. The book is intended for use in high schools, especially in states which require by law the teaching of the Constitution.

The Bureau for Research in Government at the University of Minnesota has recently published *An Outline of County Government in Minnesota*, by William Anderson and Bryce E. Lehman (pp. 174); and *A System of Classification for Political Science Collections, with Special Reference to the Needs of Municipal and Governmental Research Libraries*, by William Anderson and Sophia H. Glidden (pp. 188).

The National Municipal League has issued as the second number of its Technical Pamphlet Series a fourth edition of Mr. A. E. Buck's *Administrative Consolidation in State Governments* (pp. 58), first published in 1919. The history of the subject is brought down to January, 1928.

Three recent publications of the Municipal Administration Service are: *Codification of Ordinances* (pp. 49), by E. D. Greenman; *The Administration of the Gasoline Tax in the United States* (pp. 28), by Finla G. Crawford; and *Reporting Municipal Government* (pp. 77), by Wylie Kirkpatrick.

The extension division of the University of North Carolina has published a debate handbook on *The McNary-Haugen Farm Surplus Bill* (pp. 109).

## FOREIGN AND COMPARATIVE GOVERNMENT

Students of government will find something of interest in four recent books dealing with various phases of British politics: *Empire to Commonwealth: Thirty Years of British Imperial History*, by Walter Phelps Hall (Holt, pp. xii, 526); *British Foreign Secretaries, 1807-1916: Studies in Personality and Policy*, by Algernon Cecil (Putnam, pp. xii, 378); *W. E. Gladstone*, by Osbert Burdett (Houghton Mifflin Co., pp. viii, 307); and *The Making of a Nation*, by Vincent Massey (Houghton Mifflin, pp. iv, 44). *Empire to Commonwealth* stresses constitutional history, as is evident from the arrangement of materials. After a chapter sketching the close of the Victorian era, South Africa, Australia, and Canada are successively taken up. The beginnings of imperial coördination before the war and the rôle of the Dominions during the war form the bridge to a treatment of Ireland, India, and Egypt. As the author himself admits, slight attention is given to the dependencies and the like, but on the whole the treatment is vivid and readable. A well selected bibliography increases the value of the work, which, the author says, relies mainly on the Parliamentary Debates, Dominion as well as British, and on the parliamentary or sessional papers of the House of Commons. In his work on *British Foreign Secretaries*, Mr. Cecil has succeeded admirably in setting off the personality of each of his portraits against the general background of their particular problems and policies. These essays have the luster which one is wont to expect in the paintings of great masters, and it is a great relief that amidst the mud-slinging fashion of the day, Mr. Cecil does not hesitate to declare his preference for the "quiet Scot (Lord Aberdeen), who in his political theory was so much of a scholar and in his political practice so much of a saint." The author has also put into bold relief the "discontinuity in British foreign secretaries," which leads him to the belief that the "true sequence of policy is to be found in personality and not by chronology" (p. 157). Thus Castlereagh, Canning, Aberdeen, and Palmerston, no less than the three Whig earls (Clarendon, Granville, and Rosebery), Salisbury, and Grey, are made the basis of a suggestive challenge of that often alleged continuity in British foreign policy. Mr. Burdett's biography of Gladstone is an attempt at revivifying the life of the great statesman as it lies buried in the "quarry" of Morley's monumental record. This has been done faithfully but perhaps a bit uncritically. To note one concrete example: no real understanding of the "gulf of tempera-

ment between the odd pair"—Gladstone and Queen Victoria—can be obtained from this attempt "to fix upon the more revealing moments of action, word, and growth in Gladstone's life." The real Gladstone is as yet evasive, not unlike another great statesman and orator, Thomas Jefferson. C.D.F.

Political, social, and economic conditions in Russia are the subject of a number of recent books, including *Leninism*, by Joseph Stalin (International Publishers, pp. 472), *The Mind and Face of Bolshevism*, by René Fülöp-Miller (Knopf, pp. xv, 433), *Russian Economic Development* (since the Revolution), by Maurice Dobb (Dutton, pp. xii, 415), *Labor Protection in Soviet Russia*, by George M. Price (International Publishers, pp. 128), and *Present Day Russia*, by Ivy Lee (Macmillan, pp. viii, 206). The volume on *Leninism* by the general secretary of the Communist party of the Soviet Union is the most valuable of these various books from the point of view of the student of government. The author analyzes the writings and speeches of Lenin in order to present his theories and ideas and explains the aims, policies, strategy, methods, and results of the Communist party from the pre-revolutionary period down to the present time. Of special interest is the author's statement on the tasks of the "party as concerns the international revolutionary movement." These include "a struggle against new wars;" the extension of Russian "commerce with the foreign world on the basis of the consolidation of the state monopoly of foreign trade," the promotion of "a rapprochement to the countries that were vanquished in the imperialist war . . . and are therefore inclined to form an opposition to the dominant group among the great powers;" and the joining of forces with the dependent and colonial countries." Fülöp-Miller's book is the best account of cultural life in Russia and of the psychological ideas underlying the economic and political developments of bolshevism which has come to the attention of the reviewer. It presents an interesting contrast to Stalin's laudatory account.

Careful in his facts on the older economy and in his figures on resources, roads, or manufactures, and cautious in his expectations of political without economic reorganization, Scott Nearing in *Whither China? An Economic Interpretation of Recent Events in the Far East* (International Publishers, pp. 225) flings discretion to the winds in estimating the speed and effects of economic-political "revolution." The old magic-working, semi-secret Red Spears are agrarian revolu-

tionaries against brutal rural exploitation. "Labor unions" engineered by very small Communist nuclei are presented as if largely spontaneous and essentially revolutionary (*Communist International*, Easter, 1926). Modern education in China, he states, dates really from the revolution of 1911. And a writer in *Current History* is offered as sufficient authority for the statement that in two provinces embracing 50,000,000 people, "the family as an integral unit has almost disappeared." All pre-Soviet foreign influences, from the "opium wars" to the "imperial offensive" of 1925-26, are "imperialistic;" all Soviet influences are fraternal and benign—a few corroborating facts are suggested. The undertone of prophecy increases. The finale is to be Soviet China acting as business manager for Soviet Russia in erecting a Soviet Europe on the ruins of present-day capitalism. M. T. P.

*The Treasury.* By Sir Thomas L. Heath (G. P. Putnam's Sons, pp. iv, 238) is another of the small informative volumes on the great administrative offices of English government today, published under the collective title of *The Whitehall Series* and edited by Sir James Merchant. Although the author apologetically remarks that "the subject of the Treasury is not one that lends itself greatly to popular treatment," he is to be complimented upon the readable account which he has given of the many phases of this powerful administrative body. However, the value of this study (as well as of others in this series) would be considerably increased if it contained a carefully selected bibliography and a grouped exposition of the official documents which originate in the Treasury. A comparison between these English studies and similar ones undertaken by the Institute for Government Research in Washington shows that while the English studies are superior in form of presentation and readability, the American studies are a good deal more useful as material aids to further investigation and research.

#### INTERNATIONAL LAW AND RELATIONS

The subject of the World War and its aftermath continues to attract attention, as indicated by the appearance of four recent books all of which are published by Alfred A. Knopf: *Lord Grey and the World War*, by Herman Lutz (pp. 346); *The Mirage of Versailles*, by Herman Stegemann (pp. 360); *England's Holy War*, by Irene Cooper Willis (pp. xx, 398); and *Locarno: A Dispassionate View*, by Alfred Fabre-Luce (pp. viii, 209). The first two are translated from the

German and present the point of view of the authors' country. The first is in large measure a scholarly and well-balanced answer to the memoirs of Lord Grey. The author places the responsibility for the war first on Russia, then on Austria-Hungary, Germany, France, and Britain. Mr. Stegemann reaches the conclusion that the time has come to make an end to the treaty of Versailles, since "history shows us that not Germany, but Europe *and* Germany, will be ruined in consequence of it. . . . The history of Europe will be determined by the defeat of the treaty of Versailles and the spirit that rules it." Miss Willis' book is an indictment of the attitude and policy of the English Liberals during the war in regarding England as the "savior of mankind." Her material is drawn largely from Liberal newspapers. All four books are readable, and like the other books published by Knopf are excellent examples of the printer's art at its best.

The lectures of Sir Arthur Willert at the 1927 Williamstown Institute of Politics have been published by the Yale University Press under the title *Aspects of British Foreign Policy* (pp. 141). The most interesting chapters are those on British policy in China, especially in regard to concessions and the Russian question. Speaking of Russia, the author states: "We have no desire to interfere with its internal affairs. If Russia likes to practice communism within her borders, we shall not interfere. All we ask is that she repay us in the same coin of non-interference, that she shall keep her doctrines for domestic consumption and not export them and push them upon us by propaganda and intrigue."

The H. W. Wilson Company is to be congratulated upon the uniformly high quality of the recent volumes in its Handbook Series. In addition to the volume on China, noticed elsewhere in this number of the *Review*, these have also appeared: *Selected Articles on Interallied Debts and Revision of the Debt Settlements* (pp. xxxv, 489), compiled by James T. Gerould, librarian of the Princeton University Library, and Laura S. Turnbull, and *Selected Articles on Intervention in Latin America* (pp. lii, 295), compiled by L. T. Beman. Like the other books in the Handbook Series, each work contains an exhaustive bibliography, affirmative and negative briefs, and numerous articles and extracts from official documents on opposing sides of the questions considered.

An interesting and informing little book is William E. Walling, *The Mexican Question; Mexico and American-Mexican Relations under*

*Calles and Obregon* (Robins Press, pp. 205). The first ten chapters portray Mexico under Calles, the next eleven survey the Mexican labor movement, and the last five outline recent and current aspects of Mexican-American relations. The general slant of the discussion is indicated by the conclusion that "the 'Coolidge doctrines' are nothing more nor less than the expression of the latest program of American big business and organized business generally for the use of the American government, the money of American tax-payers, and the lives of American young men in the army to advance 'the property interests' of private capital abroad" (p. 193). But the book will repay a careful reading.

*Mexico Before the World* (Academy Press, pp. 244) is a compilation of the important addresses and public documents of President Calles translated from the Spanish and edited by Robert H. Murray. The book has been published for the purpose of furnishing "authoritative information upon the man and his work and upon topics relevant to the present state of governmental, social, economic, and kindred conditions in Mexico."

The central theme of *Imperialism and Civilization*, by Leonard Woolf (Harcourt, Brace, pp. 182), is that the clash between the white and colored races is due, not to differences of color, but to an imperialistic policy which attempts to make the native races subservient to the whites.

The reference department of the Ohio Wesleyan University Library has issued an eighteen-page typewritten *List of References on the Protocol for the Pacific Settlement of International Disputes*.

#### POLITICAL THEORY AND MISCELLANEOUS

The report of a survey conducted by Professor Frederic A. Ogg for the American Council of Learned Societies is embodied in a book of 454 pages entitled *Research in the Humanistic and Social Sciences* (The Century Co., 1928.) The descriptive adjectives in the title are used in the broad sense. There is an extended treatment of the status and problems of research in American universities and colleges, and it is intimated that the ideal research unit is "from many points of view the university professor surrounded by a few students sufficiently advanced to be fruitful collaborators." The danger that research may pass from the university to the business office and extra-academic

institutions, with the possible drying up of the sources of creative effort, is pointed out. Research is shown to have been greatly stimulated by the World War. Recently there has been a growing tendency to associate research undertakings with educational foundations. Briefly described are ten research councils in the social sciences generally; one in the field of history; twenty in economics; five in political science; seven in the municipal field; nine in sociology; sixty-three miscellaneous national and local organizations; thirty-four in private business; the numerous government bureaus and commissions; the ten major educational foundations; and the libraries, fellowships, prizes and other aids to research. A helpful bibliography and index complete a book which covers a wide range of investigation and which puts all people interested in research under obligation to Professor Ogg and to the Council of Learned Societies.

*The National Institute of Public Administration: A Progress Report*, by Luther Gulick (pp. 106), is the story of "the work, the failures, and the achievements of the New York Bureau of Municipal Research, of the Training School for Public Service which was affiliated with the Bureau in 1911, and of the National Institute of Public Administration into which these organizations were fused in 1921." The result is a modest, straightforward account of the part played by this pioneer bureau and its successors in applying the scientific spirit to government and in raising the level of public administration. As stated by Dr. Gulick: "The National Institute of Public Administration . . . is dedicated to the application of science in public administration. It is led on by the belief that more progress can be brought about in government through an application of the scientific spirit, through impartial research, through the testing of ideas, and the discovery of principles of administration than through any program of political reform which mankind has yet adopted. To this end the Institute is endeavoring to bend its energies through unhampered scientific research, through non-partisan programs of practical reform, and through the training of men and women who carry into public service, research, and education these same ideas."

*Elements of Political Science Research: Sources and Methods*, by Austin F. Macdonald (Prentice-Hall, pp. 94), is a working manual intended for students enrolled in advanced courses. Suggestions are made in regard to methods of research and the most important source materials in the study of federal laws, state laws, local ordi-

nances, judicial decisions, congressional debates and documents, executive and other reports, foreign legislative debates, and British parliamentary papers. In addition to an explanation of sources and methods, the author has included problems for investigation at the end of each chapter.

*Outlines of Public Utility Economics*, by Martin C. Glaeser (Macmillan, pp. xxvi, 847), is of as great interest to the student of state and local government as to the economist. Following several introductory chapters on the economic basis of public utility enterprises, the author devotes the second part of the book to a detailed consideration of the development of regulatory agencies, including such topics as the common-law basis of regulation, the constitutional basis of regulation, the pre-commission system of state regulation, the earlier regulation of local utilities by special franchises, the regulation of utilities by commissions, and the use of flexible rate franchises such as the sliding scale and service-at-cost plans. Part III covers the administration of public utilities under regulation and deals largely with the complicated problems of valuation, rate of return, labor policies, and taxation. The concluding part on "trends in public policies affecting utilities" is especially significant for students of government. Here the author discusses the government as a public enterprise, analyzes the results of the service-at-cost plan, and ends with a general summary and forecast for the future. Professor Glaeser points out the danger of public ownership in a community where the public is "perilously divided or opposed to the policy" and stresses the importance "that governmental administrative organs and the public finances be not overloaded with economic enterprises so that inefficiency and confusion will result." He also expresses the opinion that the "emasculatation of commission regulation, by whatever methods accomplished, is to be deplored." Mr. Glaeser has given us by far the most useful work that has yet appeared on this important subject.

*A History of Hindu Political Theories: From the Earliest Times to the End of the Seventeenth Century A.D.*, by U. N. Ghoshal (Oxford University Press, pp. xviii, 257), is well summarized in the following extract: "The state, or the political association, as conceived by the Hindu thinkers is not, as among the Greeks, a natural institution having its origin in the essential characteristics of human wants. On the contrary, all the Hindu theories relating to the origin of kingship imply that political authority which is the essence of such association arose



either by means of popular agreement or else the agency of divine ordination, the immediate occasion for its creation being the imperious need of protecting the people from anarchy. . . . Political authority is conceived by the Hindu thinkers . . . to be the fundamental and the essential condition of functioning of the people's activities. This attitude leads to . . . the tendency to subordinate morality to the interests and exigencies of the state," which "tends to become an end in itself." The reviewer is not in a position to check up on Mr. Ghoshal's analysis of Indian thought beyond comparing it with certain other secondary writers, such as Banerjee, Bandarkar, Hillebrandt, and others. But it should be pointed out that Mr. Ghoshal takes issue with these writers on several important points, his main contention being that too much has been interpreted into Indian political theory on the strictly theoretical side and that hints have been taken to mean the same as well worked out philosophical structures such as that of Thomas Hobbes.

C. D. F.

Charles C. Marshall, whose letter to Governor Alfred E. Smith in the *Atlantic Monthly* attracted so much attention some months ago, has elaborated his views in a book on *The Roman Catholic Church and the Modern State* (Dodd, Mead, pp. xiv, 350). After a brief discussion of the early relations between church and state, the author examines the question in the light of current events in the United States, Italy, Mexico, and France. Especial emphasis is placed on the problem as it affects our own country. The author reaches the conclusion that the "authoritative and unusual doctrine of the Roman Church is irreconcilable with American constitutional principles," and that "a Roman Catholic solidarity, under compulsory obedience to the Pope, obstructs in moral issues that free exercise of moral consciousness in the electorate on which the constitutional order of the modern state depends." The book shows a careful consideration of sources, especially authorities acknowledged by the Church. *Catholicism and the Modern Mind*, by Winfred E. Garrison (Willett, Clark, and Colby, pp. 267), is a popular interpretation of Catholicism, including the relation between church and state, by a non-Catholic.

*Politicians and Moralists of the Nineteenth Century*, by Émile Faguet (Little, Brown, pp. 317), contains essays on six writers of the previous century—Stendhal, Tocqueville, Proudhon, Sainte-Beuve, Taine, and Renan—who as skeptics, positivists, or merely observers represented a reaction to the views of their predecessors such as

Saint-Simon, Fourier, and Comte, who concentrated their thoughts "upon the idea of the restoration or creation of a spiritual force considered by them all to be necessary." The essays on Tocqueville and Proudhon are naturally of most interest to students of political philosophy. The chapter on Tocqueville is one of the best short analyses known to the reviewer.

The Cambridge University Press has brought out an edition of Thomas Hobbes's *The Elements of Law, Natural and Politic* (pp. xvii, 195), edited with a preface and critical notes by Ferdinand Tönnies. The book is made up of two treatises by Hobbes which appeared in 1650—one dealing with *Human Nature; or the Fundamental Elements of Policy*, the second, with *The Elements of Law, Moral and Politic, with discourses upon moral heads, as: of the law of nature; of oaths and covenants, of several kinds of government, with the changes and revolutions of them*. Here the reader will find the groundwork for certain ideas which were more fully developed in the *Leviathan*. Mr. Tönnies has also subjoined to the main body of the work several bits of manuscript on philosophy and optics which have never before been published and which were not hitherto known to be the work of Hobbes.

Mr. Paul W. Ward's *Sovereignty* (The Hill Bookstall, Syracuse, pp. 201) is an attempt at a compressed historical, analytical, and critical discussion of this theory. Particular attention is given to the attitude of the idealists, the pragmatists, and the internationalists.

Volume V on *Athens 478-401 B.C.* and Volume VI on *Macedon 401-301 B.C.* of the Cambridge Ancient History, edited by J. B. Bury, S. A. Cook, and F. E. Adcock (Macmillan, pp. xxii, 554; xxiii, 648), deal with a period fertile in material which is of great interest to students of political science. Of special importance to readers of the *Review* are E. M. Walker's chapter on "The Persian Democracy," W. S. Ferguson's on "The Oligarchic Movement in Athens" and on the "Fall of the Athenian Empire," J. B. Bury's on "Dionysius of Syracuse," W. W. Tarn's on the "Conquest of the Far East," and especially E. Barker's on "Greek Political Thought and Theory in the Fourth Century."

A careful and instructive study of modern Greece is William Miller's book of that name (pp. 351), which has been published by Scribner's in their Modern World series. Special emphasis has been placed on

politics, and there is a chapter on the new constitution of 1927. Another book by the same author is *The Ottoman Empire and Its Successors, 1801-1927* (Cambridge, at the University Press, pp. 616), which has just appeared in a new edition.

Phillips Russell's *Benjamin Franklin* (Brentano, pp. 332) is a biography of "the first civilized American"—to use the author's sub-title. In general, the volume represents an attempt to survey the career of this many-sided man "in the light of the new psychology." But it turns out to be gossipy and somewhat ill-proportioned, making much of little things and allowing some of the greater things to slip out of their right perspective. Nevertheless, the book contains some new material and on the whole is good reading.

*Introduction to Governmental Accounting* (John Wiley, pp. xi, 285), by Lloyd Morey, comptroller of the University of Illinois, is intended as a text-book for students and as a manual for public officials. The author is of the opinion that in the past too much emphasis has been placed upon the similarities of governmental accounting to commercial accounting. In his opinion, "problems of governmental accounting are primarily problems of governmental administration," and "to be understood and interpreted successfully they must be studied from that viewpoint and not alone from the narrower viewpoint of accounting technique." It is with this purpose in mind that Mr. Morey has prepared his excellent treatise.

One of the recent text-books intended for third and fourth year students in high school is J. M. Mathews' *Essentials of American Government* (Ginn, pp. 419). The author attempts to steer a middle course between the old-fashioned text-book which was merely an outline of government and the newer "community civics." In its main outlines the book is planned in accordance with the recommendations of the committee of the American Political Science Association "appointed to define the scope and purposes of a high school course in civics" as published in the *Review* (Volume XVI, pp. 116-125).

*American Labor Dynamics*, edited by J. B. S. Hardman (Harcourt, Brace, pp. xv, 432), contains a section on labor and politics in which Abraham Epstein discusses American labor and social legislation and Seba Eldridge contributes a careful analysis of labor and independent politics. In the latter the federal system of government, checks and balances, and the lack of class consciousness are assigned

as the most important reasons for the lack of a separate labor party. The author suggests that a survey should be made by some neutral research organization which would bring out the facts as to the relative advantages and disadvantages of a non-partisan political policy on the part of labor.

Of great interest to economists is the publication of David Ricardo's *Notes on Malthus' "Principles of Political Economy"* (Johns Hopkins Press, pp. cviii, 246.) The existence of this work has been known for nearly a century, but the manuscript was long ago given up for lost. It was recently discovered, however, and has been edited by T. E. Gregory and J. H. Hollander. The latter contributes a long evaluative introduction in which he concludes that, while the work will not change our estimates of the two great economists, it should rouse interest in Malthus' neglected treatise and increase respect for the intellectual greatness of Ricardo.

A comprehensive survey of *Equity Jurisprudence*, by Sherman Steele, has been published by Prentice-Hall (pp. 897). The book includes about three hundred cases, which are articulated by brief summaries of the leading principles.

The University of Oregon has published a comprehensive and convenient, though by no means exhaustive, *Bibliography of Censorship and Propaganda* (pp. 133), compiled by Kimball Young and Raymond D. Lawrence. Short annotations are included on many items.

*Big Matt*, by Brand Whitlock (Appleton, pp. 284), is a story of state politics featuring a governor and an old-time political boss to whom the governor owes his success. Written by one who is familiar with American politics, the book, in spite of the fact that it is fiction, has some value for the student of government.

*The A B C of Prohibition*, by Fabian Franklin (Harcourt, Brace, pp. 150), is an attack upon the Eighteenth Amendment written in popular style and with a decided bias.

The most recent addition to the Century Historical Series is a well written, readable, and carefully arranged *Economic and Social History of the Middle Ages* by James Westfall Thompson, of the University of Chicago (Century, pp. ix, 900).

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

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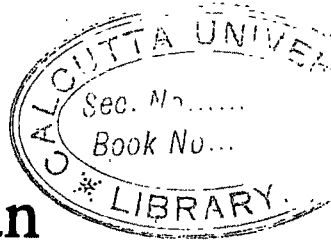
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# The American Political Science Review

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Vol. XXII

NOVEMBER, 1928

No. 4

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## THE MENTORS OF MUSSOLINI

WILLIAM KILBORNE STEWART

*Dartmouth College*

Attentive observers of conditions in Italy are well aware that Fascism is an exceedingly complicated phenomenon; that what seems to be simply a dictatorship of the upper classes in reality presents many surprising and apparently contradictory features. Fascism, indeed, has been likened to a great river into which numerous tributaries have poured their waters. Among these tributaries are such movements as Nationalism, Futurism, and Syndicalism. Besides, Fascism is more than a practical experiment in government. It has developed a theory and a philosophy, and, one may even add, an art, a mysticism, and a religion. "Fascism," declares Mussolini, "has a doctrine, or, if you will, a philosophy with regard to all the questions which beset the human mind today." And again he remarks, "We play upon every chord of the lyre, from violence to religion, from art to politics."

The stages in the outward history of Fascism need only be mentioned. The movement had humble and, its enemies say, even sordid beginnings. The first Fascio di Combattimento was formed in March, 1919, by Mussolini and other derelicts of the war. This organization, swollen by all sorts of unexpected accretions, was transformed into the National Fascist party in November, 1921. In October, 1922, occurred the sensational march on Rome, which placed the party exultantly, but none too securely, in the seat of power. The murder of Matteotti in May, 1924, precipitated a dangerous crisis in which Fascism appeared to be momentarily on the defensive, but from which it triumph-

antly emerged as complete master of the situation. Since then it has effectually quelled all opposition and has proceeded to the realization of its constructive program, of which the great Labor Charter of April, 1927, is thus far the most impressive item.

But the inner story of Fascism is a wholly different thing. What was proletarian is now bourgeois. What began as radical has ended as conservative. Sedition has changed into loyalty. Left has turned right. The only constant quantity, the sole *continuum*, in this bewildering reversal has been Mussolini himself. It is not unnatural that Mussolini has been accused by his adversaries of being the arch-turncoat of history, outdoing all other famous renegades in the vast and devastating effect of his treachery to the cause of popular liberty. And, in plain fact, there is no denying that Mussolini was at one time a socialist, a republican, an atheist, a subverter of the government, and that he is now the opposite of all these things. He who was once against all constituted authority has become Authority incarnate. Even his partial pacifism and tepid feminism have vanished. Surely no other such complete volte-face is on record. His enemies say that the simple explanation is time-serving ambition. His supporters and those who are dazzled by the bold glamour of his name aver that it is the genius of creative statesmanship, which has not only divined but has actually directed the course of events. At this short range and with our insufficient data, it is impossible to pronounce upon either of these sweeping judgments. The unbiased historians of the future, if there be such, will have to decide the matter, and possibly even they may not be able to agree in their verdict.

But Mussolini has himself given us some indications of the influences which have contributed to his mental growth and to the formation of his outlook on life; and these indications have been rather unaccountably neglected by his biographers and by the controversial writers on Fascism. It seems only reasonable to suppose that an attempt to follow up these clues may be of some help in an understanding of the situation. That they will furnish anything like a full explanation, I do not for a moment

believe. In comparison with the marked and many-sided personality of Mussolini and with the surge and tumult of public events, mere ideas must seem pallid and nugatory. Besides, Mussolini, like Napoleon, has always professed to despise ideologies. Like nearly all statesmen, he is averse to abstract thinking. It is noteworthy, for example, that he has left the theoretical exposition of Fascism to others—to the philosopher Gentile, his former minister of education, and to Rocco, the minister of justice, whose formulation of principles, made in August, 1925, is regarded as the classic statement on the subject. But precisely one of Mussolini's salient characteristics is his quick and receptive intelligence. He has always had to exercise his wits as well as his will. He has been from early youth an eager reader and learner. No one has more readily assimilated ideas which he has felt to be vital to himself. Man and circumstance have indeed been the protagonists in this moving drama; but ideas have inevitably affected the theme.

Mussolini has made at least two statements about the thinkers who have most influenced him. In one of these he mentioned three foreigners, Nietzsche, William James, and Georges Sorel. In the other he added the name of his fellow-countryman, Machiavelli. To these four men I will join two others, Pareto and Oriani.

## I

Since he became dictator, Mussolini has paid unstinted homage to Machiavelli as "the prophet of the pragmatic era in politics." He has read and re-read him and has undertaken a doctor's dissertation on him for the University of Bologna. He has called Machiavelli's *Prince* "the statesman's supreme guide." And he adds with exemplary frankness, "I want to preserve a direct contact between Machiavelli's doctrine and my life, between his and my thoughts on men and affairs, between his and my practice of government." In the world outside of Italy, Machiavelli's name has come, rightly or wrongly, to connote immoralism. Nothing succeeds like success, the end justifies the means, reasons of state override all ethical scruples—such seems to be

his plain drift. But in Italy his memory is revered as that of a great patriot who longed above all things for the independence and unification of his country. It was from this point of view that Cavour paid him tributes of respect and that Victor Emmanuel II was minded to refer to the "noble ideal underlying and permeating all his work."

To be sure, if *The Prince* is subjected to the ultimate ethical test, that is, if it is examined from the viewpoint of collective humanity throughout the ages, it has wrought mischief enough. It has encouraged Realpolitik, Machtpolitik, and the practice of international force and fraud. It has also produced what has been aptly called "the illusion of the proximate," and has fostered all sorts of minor political intrigues of the moment. Proudhon once declared that all Italians were Machiavellian at heart—an unwarranted exaggeration, as one realizes in thinking of Mazzini. But unquestionably the Machiavellian tradition has always been kept alive in Italy. The *sacro egoismo* proclaimed so openly by Salandra and Orlando on Italy's entrance into the World War in 1915 is the modern equivalent of Machiavelli's *frodi onorevoli* and *sceleratezze gloriose*. The only crime is a blunder.

Although some of Machiavelli's maxims may shock us in their naked formulation, there is a certain redeeming candor about them which is very refreshing to one who has listened long to the unctuous rectitude of so many public men. Mussolini is similarly frank. He has never pretended to be anything but a *realizzatore*, a pursuer of practical aims. He has an instinctive distrust of anyone who ascribes disinterested motives to himself. He does not mouth noble words. He has no sympathy with humanitarian idealism of the Woodrow Wilson model. And he assuredly is no internationalist—not even a "good European," whatever else he may have learned from Nietzsche. His purview and concern is Italy. Nor would he delude himself about the human material with which he has to work. He has none of that confidence in human nature which democratic idealists have manifested, so inspiringly or so pathetically as the case may be, since the days of Rousseau and Jefferson. He fully en-

dorses Machiavelli's opinion that men are false, selfish, ungrateful, and cowardly. "A sad lot," Machiavelli called them, "more interested in material gain than in their own honor, ready to change their attachments and affections with every veering wind." Mussolini's gloss on these words is that his own judgment would be even harsher. It is upon this solid foundation of distrust of men that Mussolini would build. "I affirm," he says, "that the doctrine of Machiavelli is more living today than it was four centuries ago."

There is some evidence that Mussolini has conceived his task to be the complete fulfillment of Machiavelli's aspiration. The latter wished to see Italy united and sufficiently strong to repel the foreign invader. Unification came in 1860, but before the birth of Fascism the moral unity of the Italian people had been broken, first by the feud between the civil government and the Vatican, and, more alarmingly, by the anti-nationalistic communist movement following the World War. The old animosity between church and state had largely abated; but the class war which came to a head in 1919 threatened the utter disruption of the nation. It is a disputed question whether the march on Rome in October, 1922, saved Italy from Bolshevism, as the Fascists allege, or whether the worst danger was not already past, as their opponents assert. But in any case the attitude of Mussolini is clear: no class war is to be tolerated in the new Corporative State which Fascist doctrine has devised. Here again Mussolini may appeal to Machiavelli, who pointed out that, although every state naturally divides itself into oppressors and oppressed, a wise prince will make an effort to lessen class struggle. Nowhere else has Mussolini made a more complete repudiation of his earlier views than in this matter of the class conflict. A proletarian himself, brought up a socialist, a follower first of Marx and then of Sorel, for some time editor of *Avanti*, the chief socialist newspaper of Italy, Mussolini had class consciousness bred into his bones. It is significant that the first newspaper which he edited was called *La Lotta di Classe*. But patriotism, the nationalistic impulse, and the practical exi-



gencies of government have done their perfect work. Machiavelli has triumphed over Marx and Sorel.

For both Machiavelli and Mussolini, force must be the foundation of government and hence the *ultima ratio* of the prince. In an interesting article published in the spring of 1923, called "Forza e Consenso," which is a sort of apology for the Fascist revolution and a reply to its liberal-democratic critics, Mussolini writes: "How are you going to prevent discontent from spreading and becoming a danger to the state? You will prevent it by force, by the inexorable use of that force when necessary. Take away from a government any sort of force—I mean physical force, armed force—and leave it only with its immortal principles, and that government will be at the mercy of the first organized group that decides to make an end of it. Fascism, once for all, is getting rid of these anti-vital theories" (i.e., popular sovereignty, the consent of the governed, etc.). "To speak of the sovereign people is to utter a tragic jest." Machiavelli called for a native militia to take the place of mercenary troops. Mussolini has created a Fascist militia, first to seize power for himself and now to reinforce the regular army in the maintenance of that power. Machiavelli in his *Discorsi* makes the following assertion: "The principal foundation of all states, both ancient and modern, is good laws and the proper military force to support them." Nothing could more admirably summarize the theory and practice of Mussolini than this succinct statement. What constitutes good laws, and how they are to be executed, is a matter for subsequent consideration.

There is a marked similarity between the two men in their attitude toward organized religion. The Erastianism of mentor and pupil is complete. Machiavelli saw in the papacy, with its temporal power, the chief obstacle to a united Italy. Mussolini has reached a sort of *modus vivendi* with the Vatican. The latter, shorn of its temporal rule, has indeed not abated its theoretical claims, but it has ceased to urge them in a menacing fashion, and for some fifteen years it has allowed its faithful sons to exercise their full privileges as Italian citizens. As for personal religion, there seems to be small difference between Machiavelli,

the Renaissance pagan, and Mussolini, the twentieth-century pagan, though the latter has long since ceased his anti-Christian utterances and abandoned his anti-clerical posture. For him it suffices that Roman Catholicism is the traditional religion of the Italians and that Rome is the spiritual capital of 200,000,000 or more people. Both of these things are of inestimable advantage to the wise ruler, for whom, as has been remarked, all religions are useful. "Religion," he states, "is a formidable force which must be respected and defended." But the Church must be kept in its place.

Does not Mussolini in truth seem to embody almost miraculously those very qualities which Machiavelli postulated for his prince? A man of *virtù*, of proven courage, of indomitable will, and of steadfast purpose, as unwilling to spare himself as he is others; a man moreover with a passion for facts and with an almost uncanny intuition of the popular mind; sensing in advance the turn of events and thus able to forestall Fortune, whose fickleness was always such a troublesome problem for Machiavelli. Ardent and imperious by nature, he naturally prefers the rôle of the lion to that of the fox, recalling his master's precept that it is generally better to proceed boldly rather than cautiously, since Fortune, like a woman, favors the young and the daring. But he can also be prudent and wily on occasion, as if recalling Machiavelli's admonition that "those who take their stand on the lion alone simply do not understand their business." "Good strategy," remarks Mussolini, "is calculation and audacity." His shrewd sense of timing has induced in him some rather remarkable veerings of opinion, as witness his change from neutralist to interventionist in the autumn of 1914 and his still more sudden change from republican to monarchist on the eve of the march to Rome.

## II

Mussolini appears to have become acquainted with the works of Nietzsche in 1909 while he was editing a paper in Trent. As Trent was Austrian territory at the time, it was only natural that his mind should turn to German writers, and in Nietzsche

he found a soul-mate. It may be conjectured that Nietzsche brought to him in some ways a confirmation of already familiar moods rather than a harvest of new ideas; at least it would seem like carrying coals to Newcastle to preach to that lusty, ambitious youth of twenty-five the "affirmation of life" and the "will to power." But the overturning of moral values, the iconoclasm and the brilliant phrases, quite evidently captivated Mussolini. One can detect Nietzschean echoes all through his writings and speeches. Like the great German, he is constantly adjuring his countrymen to be hard, to live dangerously, to adopt a tragic optimism as the mood befitting strong men. "Weakness," he says, "is a crime not only against one's self but against one's country." "I have chosen the words 'Live dangerously' as the slogan of my life." There is even a hint of Nietzsche's *amor fati* in an aphorism of Mussolini which I saw placarded in the streets of Rome in April, 1927: "La giovinezza sta nel accettare e nel violare il destino"—"It is the mark of youth to accept and to force fate."

Nietzsche called himself an "Immoralist der Tugend," investing the word *Tugend* with the masculine meaning of Machiavelli's *virtù*. This master morality Mussolini has made his own. In a speech delivered at Milan shortly before the *coup d'état* he proclaimed: "We cannot accept the Tolstoyan moral standard, the moral standard of slavery." And he has asserted of the Fascist soldier: "He has a moral code of his own. The usual moral code, which is prismatic, with many facets, with many meshes, is of no use to him. Honor is for him what it was for the knights of old, a law which strives for, though it never reaches, the apex of perfection. It must be outside, as it is always above, the written or formal code."

We may be permitted to infer that, of all Nietzsche's teachings, it was the doctrine of the Superman that appealed to the very core of Mussolini, to the most vital and precious part of his ego. "I shall make my own life my masterpiece," he once declared. His career does in truth seem as marvelous as a saga of romance. He has been likened to Alexander, Caesar, Richelieu, Cromwell, Frederick the Great, Napoleon, Cavour, Garibaldi, and Bis-

marck. The favorite comparison is with his fellow-countryman and fellow-*condottiere* Napoleon, whom he also resembles facially. But his own avowed model is Julius Caesar, the greatest, as he thinks, of all the sons of men. It is, of course, Caesar the statesman, the true founder of the Roman Empire, whom he would emulate, for it is impossible to believe that Mussolini harbors any military ambitions; his war service, valorous as it was, did not advance him beyond the rank of a corporal. His activity and accomplishment are prodigious and seem to border on the supernatural. He is Il Duce, the chief of the Fascist party, the commander of the Fascist militia, and the prime minister of Italy. He has, in addition, filled as many as six cabinet portfolios at a time. He is hedged with a divinity more than regal, by the side of which the titular monarch appears as the *roi fainéant* that he actually is. To find a parallel for such an apotheosis one must go back to Napoleon. If Mussolini goes farther, one would suppose that he must break through the bounds of humanity and become a constellation or a deity. "Behold," he seems to say to an awe-stricken world, "the Superman is among you."

Readers of Nietzsche will remember the frequency with which the word *Zucht*, "discipline," appears in his later writings. Discipline has become the favorite word of Mussolini since his accession to power. Discipline and duty are the virtues that he would inculcate, by precept and example, in the youth of Italy. "My program," he announces, "is work, discipline, unity; action, not talk, nor theory." It would be idle to deny that he is, in striking measure, accomplishing his end. The youth of the land is responding. "Men," says Mussolini, "are perhaps tired of liberty. They have had enough of it. . . . Other watchwords exercise a much greater fascination on the youth of today—order, hierarchy, discipline." Perhaps he has once more correctly gauged the spirit of the time. Certain it is that liberty, which is under a cloud all over the world at present, is almost totally eclipsed in Italy, where freedom of speech, of writing, and of assembly simply does not exist. Nietzsche critically examined the concept *Freiheit* and asked, Freedom from what? And for what? So, too, Mussolini refuses to think of civic liberty

as an end in itself, or even as a profitable means to happiness. He talks at times as though he believed it an invention of the ideology of the nineteenth century—"the stupid century," to employ Léon Daudet's famous phrase, which the Fascist press is so fond of quoting. "The people do not want liberty," says Mussolini. "They want railways, bridges, drains, houses, roads, water, and light. . . ." "If there is a man in Italy who is not free, I am that man. I accept this servitude as the highest reward I can have conferred upon me." "Liberalism," Mussolini further affirms, "is not the last word; it does not represent any final and decisive formula in the art of government. . . . Men have been governed, more or less fortunately, in a thousand different ways." Liberalism may have been relatively good as a temporary device last century, when the forces of modern capitalism and nationality were taking shape, but it is an anachronistic survival today. "Indeed the general defeat of Liberalism and the thorough discrediting of the conception of the Liberal State is the most striking of post-war phenomena." Such is the language of this successor of Cavour. And so, proclaims Mussolini to the world, in words which a disciple of John Stuart Mill will always find it difficult to forgive or forget: "Liberty is no longer a chaste, severe maiden, for whom generations in the first half of the last century fought and died. . . . Fascism is not afraid to declare itself illiberal or anti-liberal. It has already passed and, if necessary, will again pass, without the slightest hesitation, over the more or less decomposed body of the Goddess of Liberty." There is left in Italy what Don Sturzo, the exiled leader of the Popular party, calls "the sacred liberty of the Big Stick."

### III

Mussolini's transition from Marxism to Syndicalism was made about the year 1910. The process was as painless as any gentle glide could possibly be. He was inclined to the socialism of direct action by his natural turbulence, by his disgust at the sloth and cowardice of certain of the old-line Socialist leaders, and lastly by the writings of Georges Sorel. This Syndicalist

phase was destined to last for ten years or more, and has left such a permanent impress on Mussolini's mind that an adequate appreciation of it is necessary to the understanding of Fascism as a whole. Indeed, a plausible case can be made out for the contention that without Sorel Fascism would never have come into existence; that is to say, the first Fasci di Combattimento were made up largely of groups of syndicalists, inspired by the writings of Sorel, whose influence was at all times greater in Italy than in his native France.

Sorel is one of the most tantalizing of modern political-thinkers. His personality and his ideas are so jarringly paradoxical that they seem either too good or too bad to be true, and one is tempted to say that half his attraction lies in his power to repulse. The contradictions of his personality might be passed over lightly—the fact that he, a professional man (an engineer by training), glorified the proletariat and aspersed the bourgeoisie; that this studious, ascetic recluse exalted action; and that, an intellectual to his finger-tips, he preached a relentless anti-intellectualism. But the anomalies of his thinking give us more serious pause. What are we to say about this combination of moral conservatism with the most revolutionary kind of socialism, about loving-kindness joined to violence, about this artificial naïveté—the self-conscious cultivation of the forces that spring from the unconscious? Sorel remains virtually unknown to the English-speaking world, despite the translation of his two most important works, *Réflexions sur la Violence* and *Les Illusions du Progrès*. But Mussolini, in my opinion, owes him a debt which is only equalled, if it is equalled at all, by the one due to Machiavelli.

Sorel accepted Marx's basic assumptions of the injustice of the present economic order and of the necessity of the class conflict. On the other hand, he rejected utterly, as a piece of effete ideology, the doctrine of the automatic working out of the social revolution. For him, socialism was above all a moral question. His imagination had been nourished by the study of primitive Christianity and of the lives of the Catholic saints, and by the reading of Corneille, Pascal, and Newman. He was

an intuitionist even before he became a fervent admirer of Bergson and a pragmatist long before he read William James. He had a Rousseau-like confidence in the virtues of the laborers, along with a consuming contempt for the materialistic, self-indulgent middle classes and the parasitic intellectuals. He wished to organize the workers in *syndicats*, or trade unions, which should be schools of character to train them for the heroic rôle which they were to be called upon to play. Life, he keeps assuring us, is irrational, the universe is tragic, the future is unpredictable. One thing alone we can rely upon, and that is our virile courage. Struggle and violence are the most efficacious agents in moral advance. For, though progress, as it is commonly conceived, is an illusion, history, like nature, does sometimes make leaps. The Latin aphorism, "*natura non facit saltum*," Sorel says, is an error of intellectualism. In the hope of forcing such a leap, the proletariat must be prepared to use violence, ranging all the way from sabotage to mass-strikes. Violence does not necessarily imply brutality, hatred, or barbarism; or at most these would be but unfortunate accidents. True violence is ennobling; it is the real revolutionary *élan* which is needed to give independence, initiative, and self-respect to the working-classes. By it countless sources of new energy will be released.

And what is violence to net the worker in the way of outward gain? Sorel would make no definite promises. Science, he repeated, has no way of foreseeing the future. But, the collective soul being essentially mystical, whenever great popular movements take place, myths are sure to arise. A myth is half-idea, half-image; it is the product of the imagination; but it may be a thousand times more active and efficient than so-called reality. The belief in myths has strengthened sects, nations, and whole races to acts of heroism and has given them the will to conquer. The myth of the speedy return of Jesus to earth organized primitive Christianity. The Marxian doctrine of the Social Revolution, which held Continental socialists together for so many years, was equally a myth. The new myth which Sorel taught the proletariat was the General Strike. The only

question applicable to the General Strike is: Does it grip the proletarian imagination with the force of a great myth? As Sorel puts it himself, "The myth must be judged as a means of acting on the present; any attempt to discuss how far it can be taken literally as future history is devoid of sense." The future, that is to say, must be left to the *élan vital*. But at least it is a gorgeous dream, this "catastrophic regeneration of society through the General Strike—a sublime fanaticism of violence to revitalize the sick soul of Europe."

Pareto once remarked: "Sorel has very well shown the capital importance of myth in the life of the people. It is the ideal which, manifesting itself under the form of a myth, excites, enraptures, and sustains them and renders them capable of great historical actions. The people that has no longer an ideal or a myth vegetates and tends to disappear." The importance lies not so much in the myth itself as in the sentiments it evokes. And Pareto indicated how patriotic myths might be a powerful dynamic, as in the case of modern Germany or modern Japan.

Mussolini, who is as fully persuaded as Napoleon or Disraeli that men live by imagination, has most assiduously cultivated the myth of a greater Italy which shall renew "the grandeur that was Rome." "Italy!" he exclaims, "that is the name, the great, the sacred name, in which all Fascists ought to find their true selves." And again he says: "Not the Italy of monuments and libraries, all most respectable things, but the Italy that I see born under my eyes, the Italy of today, overflowing with vitality, prepared to give herself a new lease of life, pregnant with serenity and beauty; an Italy which does not live like a parasite on the past, but is ready to build up her own future with her own forces and through her own works and martyrdom." "Fascists regard themselves as crusaders, whose ideal is summed up in two conceptions, God and their native land. They are called upon by a mystical duty to sacrifice themselves to the national cause." Italy, with the oldest civilization in Europe, but also with the youngest and lustiest blood, must be mistress of the Mediterranean and expand beyond its waters wherever colonies can be obtained. For Fascism is frankly imperialistic.



The Fascist newspapers (the only ones left in Italy) print panegyrics upon imperialism almost as often as they print denunciations of democracy. It is the mark of any vigorous, growing people, they keep saying, to reach out economically and spiritually, and hence also politically. Only the people of the United States of America are too naïve or too self-deceived to admit this, and so they prefer to call their own very real imperialism by the softer name of natural expansion, or manifest destiny, or even Monroe Doctrine.<sup>1</sup>

In his last years Sorel bestowed his blessing upon Russian Bolshevism. He did not live to see the Fascist revolution, having died two months beforehand, in the late summer of 1922. Had he witnessed it, he would never have given it his benediction. For proletarian syndicalism was there defeated by the very weapons which it had itself devised. The engineer Sorel was hoist with his own petard. "The reply to Syndicalism," said Ramsay MacDonald, "is Fascismo."

Mussolini has adopted the structure and function of the *sindacato* as a constituent part of Fascism. Doubtless the example of Soviet Russia counted for much. The vital interests of the citizenry are to be represented and safeguarded in these

<sup>1</sup> This myth of Greater Italy has taken on a distinctly religious tinge, as myths always tend to do. Mussolini has referred to it as "the new religion," and has furnished Fascism lavishly with the rites, ceremonies, and visible symbols of a cult. The following creed, taught to the *Balilla*, or boy recruits to Fascism, speaks for itself:

"I believe in Rome Eternal, the Mother of my Fatherland,  
And in Italy, her first born,  
Who was born of her virgin womb by the Grace of God,  
Who suffered under the barbarian invader, was crucified, slain and buried,  
Who descended into the sepulcher and rose again from the dead in the Nineteenth Century,  
Who ascended to Heaven in her glory in 1918 and 1922,  
Who is seated at the right hand of Mother Rome,  
Whence she will come to judge the quick and the dead.  
I believe in the genius of Mussolini,  
In our Holy Father Fascism and in the communion of its martyrs,  
In the conversion of the Italians,  
And in the resurrection of the Empire.  
Amen!"

vocational unions; and in the aggregate of all the unions the Corporative State is to have its true being, much more than in the enfeebled parliament, which is now but a shadowy relic of the democratic régime. Mussolini has in these *sindacati* a powerful instrument for the realization of justice between classes, if he should see fit to use them for that end, as some people think he eventually will. Meanwhile, the persistent wooing of the laboring classes by Fascism presents one of the most entertaining spectacles in present-day Italy.

The Fascist conception of the state bears thus a striking resemblance to that of Soviet Russia. It is one huge union of producers in which everyone must perform his task. Article 2 of the Labor Charter reads: "Labor in all its forms, intellectual, technical, and manual, is a social duty. In this sense, and in this sense only, is it protected by the state." But what sharply differentiates Fascism from Bolshevism and keeps it in line with the other countries of western Europe is the retention of capitalism and of private enterprise. Only, as the motto runs: "Nothing outside of the state; all within the state; nothing against the state."

Through the influence of Sorel, Mussolini and the comrades of his Syndicalist days lost any lingering democratic prejudices that they may have had, and any hesitancy to use violence. As late as the autumn of 1920 they approved the forcible seizure of the factories by the laborers. One of the superficially disconcerting features of Fascist Italy is the open employment of terms which we ordinarily call "red." It requires a readjustment of one's conception to think of a "revolution" in favor of law and order, a "revolution of the Right." The shock is only slightly mitigated when the adjective "creative" is prefixed, as so often happens. *Viva la rivoluzione* is a permissible cry in Italy—provided, of course, it is understood that the Fascist revolution is meant.

So it is with "violence." There is no avoidance of the word and no disavowal of the thing. "Violence," says Mussolini, "is moral when it is sudden as a storm, surgical, chivalrous." And again he asserts: "We are violent whenever it is necessary to

be so. But I tell you right now that the necessary violence of Fascism must have a line and a style of its own which should be distinctly aristocratic, or, if you prefer it, strictly surgical." But Mussolini has been careful to denounce violence for its own sake, and more than once he has had occasion to curb the destructive passion of his unruly followers. The apology that is made for organized Fascist violence is simply that it has been a necessary defence, or, in some cases, a legitimate retaliation (for Fascism has its martyrs as well as its victims), and that in total amount it is vastly less than the violence of the bourgeois French Revolution or of the proletarian Russian Revolution.

The moral conservatism of Sorel, especially regarding sexual chastity, the integrity of marriage, and the value of the family as a nurse of virtues, seems to have roused some rather belated reverberations in Mussolini. After acknowledging that he brawled, fornicated, and caroused to excess in his earlier days, he has added with a sort of saturnine complacency: "With this broad experience of life, I consider that Destiny has appointed me to purify the morals of Italy." It should not be understood, however, that a reign of prohibition, Comstockery, or blue laws is contemplated. There is still plenty of personal liberty in Italy. It is rather that everyone must be busy and productive and that no undue dalliance is to be tolerated.

Sorel was convinced by his study of primitive Christianity that the proletariat, like the early followers of Jesus, should live its life apart, uncontaminated by any alliances. Only in that way could it hope to preserve solidarity and an unimpaired morale. Mussolini is of like mind when he says: "Fascism must be inflexible in its unaccommodating attitude toward other parties. Thus and thus only can the word become flesh and ideas be turned into deeds." Should Mussolini ever discover a lukewarm, compromising, or recalcitrant faction, we may be sure that, like another Cromwell, he would proceed to a Pride's Purge.<sup>2</sup>

<sup>2</sup> The following prophecy, uttered by Sorel in 1912, is all the more remarkable, since he always insisted that no one could tell what the future held in store. "Our Mussolini," he said, "is not an ordinary Socialist. Believe me, you will

## IV

Vilfredo Pareto has already been mentioned in connection with Sorel, of whom he was a great admirer, though by no means a close follower. Pareto was only half-Italian by descent (his mother was French and he himself was born in Paris), but he was almost wholly Italian in his culture and is rightly regarded as one of the brightest ornaments of Italian scholarship. For thirty years before his death, in 1923, he was a professor in the University of Lausanne, where he established for himself a Continental reputation by his original contributions, first to economics and later to sociology. When the youthful Mussolini was a vagabond student in Switzerland, he attended Pareto's courses and conceived a great admiration for him, while Pareto in turn gave him private instruction and formed a high opinion of his pupil's ability.

Although Pareto's books are distinguished primarily by a solid scholarship, they are also illumined by some general ideas of a kind likely to kindle the interest of a restless mind. There is plainly discernible in them a growing hostility to liberalism and to political democracy and, what is its almost inevitable concomitant, a distrust of intellectualism. Pareto emphasized the importance for social philosophy of what Bismarck called "imponderables." To a socialist such as Mussolini then was, accustomed to reduce everything to the single economic motive, this was a strange and upsetting doctrine. He nowadays has no hesitation in saying: "I deny emphatically that the story of humanity can be explained in terms of economics." Pareto distinguished, in the technical jargon he employed, between the "residues," or the religious sentiments in the widest sense of the term, and the "derivatives," the rationalization of those sentiments. He believed that the residues chiefly determine the form of society and are susceptible of only the most gradual

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one day see him at the head of a sacred battalion with his sword saluting the Italian flag. . . . Perhaps it is not yet known, but he is the only energetic man capable of repairing the government's weakness." See article by M. Jean Variot in the *Paris Eclair*, Sept. 11, 1922.

modification; whereas the derivatives (i.e., the myths, the theories, the pseudo-logical reasons invented and applied by men to justify their sentiments and actions) are much more pliant and responsive to pressure. What counts in forming the strength and prosperity of a people is religion, faith, myth, a devotion to some common ideal. "In a certain sense," he writes, "we might therefore propound this paradox: in the life of a people nothing is as real and practical as the ideal." We may compare with this statement the words of Mussolini: "One cannot accomplish anything great without passionate love and religious mysticism."

Probably of even greater importance as affecting Mussolini's thinking is Pareto's political doctrine. He conceived aristocracy and democracy to be complementary aspects of social development, each a constant factor and necessary to the whole process. But he also believed that the active element, the true propulsive power, is aristocracy. It is always a minority that determines events and rules men. It was in this sense that he formulated his theory of the circulation of naturally formed aristocracies as the fundamental historical law. According to this theory, societies owe their progress to the struggle between rival minorities, each of which is an élite, but each of which must be continually renewed by fresh elements from below. In any actual struggle, the theories or ideals proclaimed are merely catch-words or battle-cries by which the ascending minority gathers adherents from the masses to dispossess the minority in power. The freer the circulation of these minorities, the greater the progress of the nation. Mussolini put this theory into practice in 1922 when he substituted his élite of youth for the decadent ruling caste.

The bearing of such a doctrine on the problem of political democracy is obvious, though not everyone will choose to draw from it the ultimate conclusions, as Mussolini has done. It is a tragic irony of history that the World War, which was said to be waged "to make the world safe for democracy," has been followed by a general disillusionment regarding democracy, and in some cases, notably in Russia and in Italy, by a definite

repudiation of it. This reaction has already been the subject of much animated discussion, in which, however, one simple thing seems not to have been set in the high relief it deserves. That thing is the realization that *there never has been in history a rule of the majority*. Men, as a whole, whether through incompetence or indifference, are permanently incapable of self-government. Reforms have been achieved, crises precipitated, and, above all, revolutions consummated by active minorities. Mussolini's words strike at the heart of the matter: "History proves that it has always been the minorities, a handful from the first, that have produced profound changes in human society." The realization of this fact and the deliberate adoption of a technique by which a minority may be organized into an aggressive and efficient force lies behind both the Russian and Italian revolutions. "Realistic political thinkers in Europe," notes Mr. Walter Lippmann, "long ago abandoned the notion that the collective mass of the people direct the course of public affairs." In short, then, according to this current teaching, the experiment of political democracy has failed, since its basic assumption has been shown to be false.

There is, further, the æsthetic objection. Mussolini says: "Democracy has taken the style from the life of the people. Fascism brings it back by introducing a line of conduct in which there is color, force, picturesqueness, the unexpected, the mystic; in fact, all that counts for the soul of the multitude."

Although Mussolini has repeatedly disavowed any intention of making foreign propaganda, he has more than once taken occasion in his speeches in Parliament to sneer at the "democratic dark ages" and at the subterfuge of popular sovereignty. In this matter, at least, he is sealed of the same tribe as Lenin, who called democracy "a bourgeois superstition." And all the while the Fascist press throughout the length and breadth of the kingdom recites almost daily the articles of its anti-democratic creed: men are not equal; the voters are not intelligent; the voice of the people is not the voice of God; parliaments are not truly representative; complete democracy is in the nature of things forever unattainable, while the sham variety current in

western Europe and in America only adds hypocrisy to inefficiency and corruption.

## V

I have been unable to discover the exact date at which Mussolini began to read William James; but probably it was before 1910. It is James as a pragmatist and as the author of such essays as "Great Men and their Environment," "The Moral Equivalent of War," and "The Will to Believe," who is here concerned. James's pragmatism had been popularized in Italy by Papini, who published in 1906 a very splenetic book *Il Crepuscolo dei Filosofi*, in which he gloated over the alleged discomfiture of the metaphysicians. It is extremely likely that Mussolini read this book; at least he must have known something about the commotion it caused. In giving his allegiance to James, he was not so much submitting to a new control as having his own ideas clarified and focussed. Mussolini's mind is essentially of the practical, extroverted sort, and is thoroughly unspeculative. It is always directed toward action. The pragmatic approach to questions is therefore native to him. Moreover, pragmatism is implicit or avowed in Machiavelli, Sorel, and Pareto; even, indeed, in Nietzsche, as has been generally recognized since the publication of Vaihinger's *Philosophie des Als Ob* in 1911. Accordingly, these intellectual influences converge to a remarkable degree.

Pragmatism is an approach to problems rather than a system, a method instead of a body of doctrines. James said: "The true is whatever proves to be good in the way of belief, and good, too, for definite assignable reasons." He further characterized pragmatism as looking forward rather than backward, regarding the world as continually unfolding. "It looks away from first things, categories, supposed necessities, to last things, fruits, consequences." Mussolini has adopted this "American philosophy," as he calls it, and insists as pertinaciously as James on the "cash-value" of an idea.

James's exposition of pragmatism was at the same time a polemic against absolutism in thinking. Mussolini's public

utterances are full of this sense of relativity. He discards fixed principles and preestablished categories. He refuses to square his present with his past actions or to bind himself for the future. Inconsistency does not trouble him in the least; in truth, how could it, in view of his own amazingly tortuous career? "In politics," Pareto once observed, "men who start from one place find themselves arriving at another whither they had no intention of going." The only endurable life for Mussolini would be in "a universe with the lid off," such as James postulated. A world of endless flux and of incalculable possibilities must have shifting goals even for the statesman. Referring to his own essay "Forza e Consenso," quoted from above, Mussolini said in an interview reported in a Paris newspaper: "The opinions expressed in this article must not be considered as dogmas, but as expressions of the needs of today, which may tomorrow become relative. . . . Every program should be carried only to the right point." Mussolini's mental attitude is so completely reflected here that the statement acquires all the value of the typical. Fascist pragmatism is nothing if not empirical and eclectic.

Mussolini agrees entirely with James that pugnacity is an instinct of human nature that cannot be eradicated by mere denunciation. What, then, of war? Mussolini, I know, is generally regarded as a standing threat to world peace. To be sure, he opposed the war against Turkey in 1911, and even defended a policy of neutrality for a very brief time in 1914, only to become shortly afterwards a rabid interventionist and eventually an influential factor in bringing Italy into the World War on the side of the Allies. Likewise his verbal truculence since he became dictator has been notorious. He has used threatening or provocative language to Germany, Turkey, Yugoslavia, Greece, and, by implication at least, France.

It is also easy to find many utterances of Mussolini in praise of war, chiefly, it is true, from the days when he was urging the participation of Italy in the European war. In these he echoes the warnings of Machiavelli against the perils of neutrality. Machiavelli declared that any necessary war is just and that if



a prince maintains neutrality he will be left without a friend and will become the booty of the victor. Similarly, Mussolini asserts: "Neutralists have never dominated events; they have merely endured them. It is blood which makes the sounding wheels of history revolve." Later he speaks of the World War as 'life-bringing for Italy, while it has meant death to neutral Spain. He represents Proudhon as exclaiming "with that perennial truth which hides behind the mark of paradox that 'war is of divine origin.'" This last statement blandly ignores Proudhon's final verdict against war.

And yet, despite all the atmosphere of militarism which envelopes the Fascist movement, no one knows as well as Mussolini that Italy dare not risk a great war, either now or in the near future. All the auguries, economic, political, and military, are against it. It may safely be assumed that Mussolini's bellicose talk is intended for effect upon internal conditions. His object is to heighten the national spirit and thereby to consolidate his own position. That such a proceeding may be fraught with unexpected perils, no sober student of history will question. But between that and willful running amuck, there is, after all, a great difference.

Of all the thinkers who have influenced Mussolini, William James alone strove to find a substitute for war. His important essay, "The Moral Equivalent of War," has, I believe, borne remarkable fruit in Mussolini's practice. James faces squarely the issue of whether mankind can afford to adopt a peace-economy. Not only have we inherited the warlike type and have had pugnacity bred into our very marrow, but we have an instinctive feeling that war is the best protection against our weaker and more cowardly selves. Without it, there is no scorn, no hardness, no valor, no steepness of life. In comparison with its sacramental glory, pacifism seems mawkish and dishwatery. If war is to be done away with, an equivalent discipline must be organized; the competitive passion must be turned into other channels. Perhaps we can strive against the obstacles of nature, combat disease and social evils. "It is but a question of time," concludes James, "of

skillful propagandism, and of opinion-making men seizing historic opportunities."

It is surely not far-fetched to see the application of James's suggestion in certain measures recently taken by the Fascist government. With the ultimate object of making Italy self-supporting in the matter of foodstuffs, an elaborate campaign has been organized to augment the yield of grain by means of more intensive cultivation and the increased use of machinery. It was heralded in the newspapers and in posters throughout the country as "the battle of the grain." Similarly, when the desired results were obtained, "the victory of the grain" was triumphantly proclaimed. The movement from beginning to end was conceived and carried out in terms of struggle and contest. Other projects are on foot, such as the draining of swamps, the combatting of malaria, and the grandiose scheme for colonizing southern Italy from the surplus population of Sicily. All of these enterprises are being invested with national importance and conducted in such a way as to elicit the pugnacious instincts and gratify the spirit of adventure.

## VI

The last of the six mentors to be noticed is Alfredo Oriani, novelist, publicist, and historian, who died, poor but proud, in 1909. He was poor because, living by his pen, he was unable to obtain a profitable market for his books; and at the same time he was too proud to violate his artistic integrity by catering to popular tastes. A few discerning minds recognized his genius toward the close of his life, but his fame has been chiefly posthumous and has not yet spread beyond Italy. Although Oriani's novels are certainly far above the average level of fiction, they would hardly suffice to give him a position in world literature. They are somber, realistic studies, resembling a little, in their mood of depression, the novels of George Gissing. It is evident that the author had a flaming love of beauty, but found physical and moral ugliness omnipresent in the life about him. Happily for him and for us, he was able in some of his other books to rise

above this disillusionment with actuality and to find his true life in devotion to the ideal.

Oriani's real significance for the Italy of today must be sought in his long historical work, *La Lotta politica in Italia*, and in his essays on public questions, especially in the volumes entitled *La Rivolta Ideale* and *Fuocchi di Bivacco*. In these books his usual laconic, epigrammatic style is suffused with a warmth of feeling that engenders true eloquence. He here writes like a Carlyle or a Michelet, assuming at times the fiery accents of a prophet, but without over-emphasis or false rhetoric. The exalted patriotism of these books suggests still another comparison, namely, with Treitschke.

Mussolini has discovered Oriani for himself of late years and has given added impetus to his fame by praising him in a speech before the Senate and by editing a complete edition of his works. Oriani is even sometimes spoken of as "the master of Mussolini;" and indeed it is not hard to believe that the latter cherishes for him a very warm feeling of intimacy and affection such as usually accompanies one's personal discovery—all the more, perhaps, because both men are natives of the same district of Italy, the Romagna. But it is impossible to think that the influence of Oriani upon the dictator is comparable to that of either Machiavelli or Sorel. It seems, rather, that Mussolini considers Oriani's writing as an admirable training-school in patriotism and unselfish service, and hopes that they will do for the present age what Mazzini's *Duties of Man* did for earlier generations of young Italians. It is interesting to note that the philosopher Gentile in his recent book, *What is Fascism?*, claims that the "idealism" of Fascism is in the best Mazzinian tradition. Possibly a liberal may be allowed to file a demurrer here.

Man's true vocation lies in the service of the ideal. *Solo l'ideale è vero* is a sentence which runs like a refrain through Oriani's essays. But how is man to conceive his ideal? It is here that Oriani's more distinctive thinking is developed. Neither a sterile individualism nor a diluted cosmopolitanism can satisfy man's deeper aspirations. He must feel himself the citizen of a nation. The essence of nationality, he explains, is the individu-

ality of a people which feels itself one, amid all the contradictions of its continuity, in contrast with other peoples. Italy has in the heritage of Rome the most inspiring of all national traditions. The glory and supremacy of the Roman Empire, the universal idea of Rome lasting throughout the Middle Ages, and the more human universality of the Church—what an incomparable legacy! Italy ought by all tokens to be the greatest and best of the nations of Europe. The proudest word of modern honor is St. Paul's *Civis romanus sum*. In his massive work, *La Lotta Politica*, Oriani devotes more than three-fourths of his space to the nineteenth century, making unification the pivotal point and treating all previous Italian history as a mere preliminary. But the Risorgimento was not achieved entirely by the efforts and virtues of the Italians themselves. A slothful acceptance of the fruits of unification would mean national decadence. Without some still loftier ideal, the "third Italy" would be a resurrection without life. But what can Italy do within its narrow confines? The future of Europe lies in other continents. The irresistible drift of events points to Africa as the field for Italy's colonial expansion. There lies her manifest destiny.

In such ways as these does Oriani foreshadow the "creative revolution" and the "spiritual imperialism" of Mussolini. The essential conservatism of the man appears in his social thinking. The Italian people urgently need the renewal of a right spirit within them, but they ought never to depart from their consecrated traditions. Religion must not yield to science, nor competition to socialism, nor the family to free love. Property is forever the true basis of society; it alone can give men self-respect and responsibility. "Democracy is fatally levelling; in order to raise the depths, it has to lower the summits." If the future is to be made secure, there must arise an aristocracy of character and intelligence. Oriani saw in the intellectual proletariat, of which he himself was such a distinguished member, the vanguard of this coming aristocracy of the spirit.

There is a close affiliation between Oriani and Mussolini in their ideas about the family. Oriani was from the outset extremely conservative on this point. One of his earliest books was

a sociological study of marriage, in which he opposed divorce and upheld the inviolability of wedlock. He was also an advocate of early marriage and of large families. It is well known that Mussolini has both talked and legislated along the same lines. He has imposed a tax on bachelors and has denounced birth-control with a more than Rooseveltian strenuousness.

Oriani was also an anti-feminist of sorts. He declared that all history testified against woman's claim to equality. Can we imagine a female Dante or Napoleon? Religions, empires, cultures have all been created by males. Genius is inexorably, fatally masculine. When Byron was asked by a woman how a member of her sex could become great, he answered, "By reaching the heart of a man." Women, so runs Oriani's comment, will never receive a more beautiful compliment nor a better counsel. A woman made us lose paradise; a woman alone can make us forget it. It is quite possible that Mussolini's change of attitude regarding the status of women may be due in part to the influence of Oriani. Mussolini's present views about the opposite sex may best be expressed in his own words. It should be remembered that he used to consort with female revolutionaries in Switzerland, and to have women as collaborators on his newspapers. He now says: "Women are the tender, gentle influence that represents the pleasant parenthesis in a man's life, an influence that often aids a man to forget his trials and fatigues but that leaves no lasting trace. The more virile and intelligent a man is, the less need he has of a woman as an integral part of himself. Women are a charming pastime, when a man has time to pass, a means of changing one's trend of thought, but they should never be taken seriously, for they themselves are rarely serious."

Immediately before the Fascists seized the government, Mussolini announced to his countrymen: "Our program is simple. We wish to rule Italy." Cynics are not wanting who say that this tells the whole story. Mussolini, they contend, has been actuated by ambition alone; his course has been the sport of opportunity. If the capture and retention of power has been the sum and substance of Fascism, then, indeed, is any discussion of

ideas or theories, or even policies, utterly illusory. But I believe that such an assertion is demonstrably untrue. Mussolini himself would be the last to deny that chance and circumstance have played an important part in fashioning his career. The goddess Fortuna is one of the oldest of Italian divinities, and she is as potent in the affairs of men at the present time as she was in the days of Machiavelli and his Prince. Nevertheless, ideas may spring from events, and elaborate theories may be based upon an historical process. Not only is this good pragmatism, it is also time-honored Italian doctrine. Vico taught it two hundred years ago. In the Beginning was the Deed.

As for Mussolini's ambition, that is hardly to be reckoned as in itself a grievous fault. Since ambition may be either good or bad, according to circumstances, the only pertinent question is: To what ends is it directed? Machiavelli said, having art and literature in mind, "It seems that Italy is meant to bring dead things to life." Mazzini, thinking of moral and political ideals, declared that Italy was to become a model for the whole world. It is with a similar confidence in the destiny of his country that Mussolini faces the unrevealed future.

## THE PHILOSOPHER OF JEFFERSONIAN DEMOCRACY

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### I

Few movements in the history of American politics and political thought have been of equal immediate or enduring importance with that associated with the name of Thomas Jefferson. And yet Jefferson never published anything other than very brief and inadequate discussions of the principles for which he stood. His only systematic exposition of his political ideas is found in his famous *Notes on Virginia*. This work, however, was written in 1781-82 and deals but remotely with the issues which were to occupy the stage after 1789. Neither in Jefferson's own writings nor in those of Madison and Monroe, his successors as official head of the Republican party and as president of the United States, do we find any adequate exposition of the theories associated with the era of Jeffersonian democracy. It is only in the extensive works of John Taylor of Caroline, a friend and associate of these men in the political battles of that period, that such an exposition is to be found. Jefferson wrote that "Colonel Taylor and myself have rarely, if ever, differed in any political principle of importance."<sup>1</sup> John Randolph said that Taylor's "disinterested principles" were "the only bond of union among Republicans."<sup>2</sup> And Timothy Pickering calls him "the Goliath of the party."<sup>3</sup> As Henry Adams has said, Taylor was regarded as a political thinker of the first rank by the Virginia school and by many other leaders of his time,<sup>4</sup> but it is equally true that his writings have occupied a position of obscurity since his death. This obscurity, however, does not

<sup>1</sup> Jefferson, *Writings* (ed. by Ford), X, 170.

<sup>2</sup> W.C. Bruce, *John Randolph of Roanoke*, II, 235; also 607.

<sup>3</sup> H. C. Lodge, *Life and Letters of George Cabot*, 442.

<sup>4</sup> *History of the United States*, IX, 195.

alter the fact that they were influential in their time and are today the best source of information concerning the principles of both the earlier and later phases of the movement initiated by Jefferson during the first years under the Constitution.

## II

John Taylor was born in Orange county, Virginia, in 1750.<sup>5</sup> At the age of ten he was left an orphan and was adopted by his uncle, Edmund Pendleton, of Caroline county. After being privately tutored, he entered the college of William and Mary, from which institution he was graduated in 1770. He then took up the study of law in his uncle's office, and, in 1774, was admitted to the bar. When the Revolution broke out he enlisted, rose to the rank of major, and served in a number of northern campaigns. Under the influence of Patrick Henry and Richard Henry Lee, he became dissatisfied with Washington's command of the army and resigned his commission to return to Virginia and be elected to the House of Delegates.<sup>6</sup> In 1780, however, he helped to raise a regiment of volunteers, of which he was made lieutenant-colonel, and took some part in the final campaign of the war. He then resumed the practice of law, and with great financial success, for in 1792 he was able to purchase an estate, Hazlewood, on the Rappahannock near Port Royal, to which he retired. The remainder of his life was devoted to agriculture, politics, and writing.

While practicing law he continued to take an active part in politics. As during the Revolution, so in 1787-89, he sided with Patrick Henry against Washington. We have it on the testimony of Madison that he was one of the most influential Anti-Federalists in Virginia.<sup>7</sup> He also supported the election of William Grayson and R. H. Lee, both opponents of the Federalist cause, to the

<sup>5</sup> The best account of Taylor's life and career is W. E. Dodd, "John Taylor of Caroline, Prophet of Secession," *John P. Branch Historical Papers*, II, 214-52. Shorter accounts are found in *Encyclopedia of Virginia Biography* (ed. by L. G. Tyler), II, 88; and Marshall Wingfield, *History of Caroline County*, 190.

<sup>6</sup> See K. M. Rowland, *Life and Correspondence of George Mason*, I, 341, where the work of Taylor in the Virginia Assembly of 1779 is referred to.

<sup>7</sup> Madison, *Writings* (ed. by Hunt), V, 41.



United States Senate. When, after four years of service, Lee was incapacitated by tuberculosis, Taylor was appointed to fill his place. However, although he was elected by the legislature for the six-year term just beginning, he refused to serve more than a few months. Why he disliked holding the office is not clear, but it is certain that the leaders of the Jeffersonian group strongly wished to have him remain in the Senate.<sup>8</sup> He again served in that body for a few months in 1803, and also from December, 1822, until his death in August, 1824. He served, too, a number of terms in the Virginia legislature. There the most notable of his acts was the introduction of the Virginia Resolutions, the general theory of which he appears to have suggested to Jefferson several months before.<sup>9</sup> It is unnecessary here to discuss the political controversies in which Taylor took part, for his importance in the field of practical politics is limited to the affairs of his own time, whereas the many writings which he prepared in defense of his views are of much more than contemporary importance.<sup>10</sup>

### III

During his first short term in the Senate Taylor wrote a number of pamphlets, most of them dealing with the economic issues

<sup>8</sup> In a letter to Pendleton written from Philadelphia February 23, 1793, Madison said: "I seize the opportunity in this case with the more avidity, as it permits me at the same time, to tell you how much we have been charmed with the successor to Col. R. H. L. and to entreat your coöperation with a number of his other friends in overcoming his repugnance to his present station. His talents during the fraction of time he has been on the federal theatre have been of such infinite service to the republican cause, and such a terror to its adversaries, that his sudden retirement, on which he is strongly bent, ought to be regarded as a public calamity and counterworked by all the means his friends can use." *Writings*, VI, 123.

<sup>9</sup> See his letter to Jefferson, June 25, 1798, reprinted in the *Branch Papers*, II, 271-76.

<sup>10</sup> On his work in the Senate see *Annals of Congress*, 8th Cong. 1st sess. (1803-04), 50; 18th Cong. (1823-24), 558-66, 601-02, 659, 675-87. See also the *Memoirs of John Quincy Adams*, VI, 263, 312, 344, 348, 356; Monroe, *Writings* (ed. by Hamilton), V, 121-49, 161. The sketch by Dodd referred to above, and the comments in Henry Adams, *History of the United States*, I, 148, 338, II, 105, and in Beveridge, *Life of Marshall*, IV, 146, are also of value. There is an interesting discussion of Taylor's early attitude toward secession in G. Hunt, *Disunion Sentiment in Congress*.

then being hotly contested in the cabinet and in Congress.<sup>11</sup> Perhaps the one most worthy of analysis is his *Definition of Parties*. This pamphlet was published anonymously, but we have it on the word of Jefferson that Taylor was its author.<sup>12</sup> The thesis of this production is that the whole work of the federal government since the Constitution went into effect "has been an exclamation for money. Obliterate from the statute books, all laws in favor of paper, and the code would be almost a blank. It exhibits a succession of new burdens upon the 5,000,000 which are a succession of delicious repasts to the 5,000."<sup>13</sup> Taylor's choice of words may be somewhat peculiar, but it is evident enough that he has no sympathy with the Hamiltonian financial program. He argues that the government which was intended for the good of the whole people has, as a result of these measures—especially the funding of the federal debt at par and the assumption of state debts, been prostituted to the uses of a small minority. Both the rights of man and the rights of property have been usurped by the "paper interest." We now have a government, not of numbers, nor even of property, but of one kind of property—stocks and bonds. This sort of property, he declares is really a species of political rather than natural property, and it is the more dangerous because it is capable of indefinite expansion. "Land cannot be increased by law—paper money may. Land, being incapable of an artificial multiplication, cannot by increasing its quantity, strengthen its influence—with paper the case is different. Land cannot in interest be at enmity with the public good—paper money is often so."<sup>14</sup>

<sup>11</sup> The economic aspects of two of these pamphlets are admirably summarized by C. A. Beard in his *Economic Origins of Jeffersonian Democracy*, Ch. VII.

<sup>12</sup> In a letter to Madison, May 15, 1794, he refers to its authorship, and says of it that "it is one of those things which merits to be preserved." *Writings* (ed. by Ford); VI, 511.

<sup>13</sup> *Definition of Parties*, 5.

<sup>14</sup> *Ibid.*, 9. "A paper junto can find an interest in restraining population even at the expense of the constitution. The danger and difficulty, with which our frontiers are extended, invariably engenders an intrepid republican spirit. The enmity of this spirit to an intriguing junto, is so constant, that it is already regarded as a deadly foe. Besides, an aristocracy for ever obstructs mankind in the pursuit of competency and happiness, because by compressing them within the

He estimated that at the time when he wrote about one-fifth of the people were excluded from the suffrage or from office-holding.<sup>15</sup> The nation would be greatly benefited if the million people excluded were to be admitted to political power, and the five thousand security holders were to be excluded. We have permitted a system of privileged orders to arise in this country—a secretary of the treasury, an incorporated bank, and a funding system. “The first will sway the legislature, by the magic of private interest. The second is a successional body having exclusive rights and legislative weight, without election or representation—and the third is a mode of representation, equivalent to the rotten boroughs of England.”<sup>16</sup> His conclusion is a radical one: “A constitutional expulsion of a stock-jobbing paper interest, in every shape, out of the national legislature, can alone recover the lost principles of a representative government, and save the nation from being owned, bought, and sold.”<sup>17</sup>

Taylor was almost as deeply interested in the affairs of his plantation as he was in the political and economic struggles between the Hamiltonian and Jeffersonian parties. He was one of the earliest students of scientific agriculture in America, and was the first president of the Virginia Agricultural Society. In 1803 he published a little book, *Arator*, which deals with the “practical and political” aspects of agriculture. It was easily the most popular thing he ever wrote, six editions being printed by 1819. Most of the book deals with the practical problems of plantation management—care of the soil, rotation of crops, and the like. But he also makes entirely clear his own opinions concerning the relation of agriculture and government.

On the first page of the preface we are informed that agriculture and politics are the primary causes of our wealth and liberty. If the one be “vitiating in practice” we have poverty; if the other, oppression. He agrees with the opinion which Jeffer-

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locality of their devices, they are more easily brought to the magical mint, and coined into money.” *Ibid.*, 13.

<sup>15</sup> *Ibid.*, 11.

<sup>16</sup> *Ibid.*, 16.

<sup>17</sup> *Ibid.*, 15.

son had expressed in his *Notes on Virginia*, that agriculture, or rather the agriculturists, are the true guardians of liberty.<sup>18</sup> However, if agriculture be subjected to the device of paying bounties to manufacturing it cannot play its proper rôle in society.<sup>19</sup> Furthermore, the tariff is only one of a number of devices for transferring the wealth of the whole to the pockets of a few, and for "rendering governments too strong for nations. . . . Armies, loaning, banking, and an intricate treasury system, endowing a government with the absolute power of applying money, under the cover of nominal checks, are other devices of this kind."<sup>20</sup> Particularly is it true in America, where agriculture is the interest of the vast majority of the people, that every device of this kind weakens and impoverishes the majority of the people while it benefits a small minority. We are constantly being told that by giving bounties to manufacturing we shall make ourselves independent of Europe and furnish a greater market for agriculture. "It would be sounder reasoning to contrast the high price of manufactures here, with the low price there, to prove that they ought to give bounties to agriculture to provide a market for manufactures."<sup>21</sup>

#### IV

The same theory of the relation of economic and political life underlies Taylor's four large treatises which appeared between 1814 and 1823. The first, and probably the most important, of them is *An Inquiry into the Principles and Policy of the Government of the United States*. Like all of Taylor's later works, it is discursive in the extreme, and it is frequently obscure, but, nevertheless, it remains as the most considerable contribution of

<sup>18</sup> *Arator* (4th ed.), vi.

<sup>19</sup> *Ibid.*, 19.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, 22. A pamphlet, probably by Taylor although it appeared under the pseudonym "Curtius," which appeared just after *Arator* is the *Defence of the Measures of the Administration of Thomas Jefferson* (1804). In this he discusses and defends the program of economy and simplicity in government, the Louisiana Purchase, and the land policy of Gallatin, which, he says, prevented "the immediate monopoly of the public lands by a few leviathan speculators."

Jeffersonian democracy to political thought. As Charles A. Beard has said, it is one of the few important systematic studies of American politics.<sup>22</sup> At the same time, it must be conceded that it appeared twenty years or more after its proper time. It is intended to be an answer to certain theories found in John Adams's *Defence of the Constitutions of the United States* (1786-88) and in *The Federalist*. Taylor contends that the theories which underlie these works were derived from old and out-worn forms of government, while the newer and sounder principles of government which have been developed in America were neglected.<sup>23</sup>

The book begins with the statement that Adams holds that aristocracy is natural and therefore inevitable. Taylor believes that aristocracy, kingship, or, as he puts it, any system of orders, has been reared upon artificial foundations. Adams, he says, bases his arguments upon the history of peoples and governments entirely different from those of the United States, and his statements are little more than a reiteration of the ancient superstitious plea: "it is the will of God."<sup>24</sup> However, although these old rules do not apply here, although the older forms of privilege—monarchy, nobility, military supremacy—were abolished, no barriers were erected to prevent the creation of a new order of privilege—"paper and patronage."<sup>25</sup> We who pity the ancients for their dullness in being duped by oppressions so clearly seen by ourselves; we who were quick to see the fallacies in Dr. Johnson's argument of "taxation no tyranny," have not fully grasped the fact that taxation is slavery when the object of the tax is not the public good but the enrichment of a small class. We "are submitting to be taxed and enslaved by patronage and

<sup>22</sup> *American Political Science Review*, XXI, 9. Beard devotes a chapter of his *Economic Origins of Jeffersonian Democracy* to this book. He there treats it as though it were solely an economic argument. Such an interpretation necessarily neglects many important aspects of Taylor's theory.

<sup>23</sup> *Inquiry*, v. "... both had paid too much respect to political skeletons, constructed with fragments torn from monarchy, aristocracy and democracy, called, in these essays, the numerical analysis; and too little to the ethereal moral principles alone able to bind governments to the interest of nations."

<sup>24</sup> *Ibid.*, 14.

<sup>25</sup> *Ibid.*, 42

paper, without being deluded or terrified by the promise of heaven, the denunciation of hell, the penalties of law, the brilliancy and generosity of nobility, or the pageantry and charity of superstition."<sup>26</sup>

Following these broad charges come several hundred pages in which, with the aid of many more or less relevant excursions, the argument is elaborated. They amount, of course, to an expansion of the writer's earlier pamphlets. At great length he rings the changes upon his argument that the bank, the tariff, and the debt have created a new feudal system in the United States. This system, aided by an unnatural alliance with commerce, which is in itself a useful and harmless function, has become an oppressive parasite upon the real source of wealth, the land.<sup>27</sup>

Taylor then goes on to consider what he terms "The Good Moral Principles of the Government of the United States." His discussion of these principles is not always of the clearest, but apparently he has reference to the following: first, such division of powers as will enable the people to retain their legal and political rights, and will "reduce power to that degree of temperature, which may make it a blessing and not a curse;" second, political equality; third, freedom of religion and of in-

<sup>26</sup> *Ibid.*, 61. He continues: "A spell is put upon our understandings by the words 'public faith and national credit,' which fascinates us into an opinion, that fraud, corruption and oppression, constitutes national credit; and debt and slavery, public faith. . . . Public faith is made with great solemnity to mount the rostrum, and to pronounce the following lecture:

"Law enacted for the benefit of the nation, is repealable; but law enacted for the benefit of individuals, though oppressive to a nation, is a charter, and ir repealable. The existing generation is under the tutelage of all past generations, and must rely upon the responsibility of the grave for the preservation of its liberty. Posterity, being bound by the contracts of its ancestry, in every case which diminishes its rights, man is daily growing less free by a doctrine which never increases them. A government intrusted with the administration of public affairs for the good of a nation, has a right to deed away that nation for the good of itself or its partisans, by law charters for monopolies or sinecures; and posterity is bound by these deeds. But although an existing generation can never reassume the liberty or property held by its ancestor, it may recompence itself by abridging or abolishing the rights of its descendant."

<sup>27</sup> *Ibid.*, Sections III-V. Cf. Beard, *op.cit.*, 334 ff.

quity; fourth, popular sovereignty.<sup>28</sup> In other words, the principle of privileged orders is a bad principle; the principle of equality before the laws is a good one. And it is only by relying upon these good principles that we can retain our liberties; neither the perfection of individuals nor the all-righteousness of the majority is dependable.<sup>29</sup> A concomitancy between exclusive privilege and political misery has appeared constantly throughout the annals of human nature; a concomitancy between political equality and political happiness has endured in America for thirty-five years in more than thirteen separate governments. From these facts we may derive a general law that political misery will inevitably follow from hereditary orders or "factitious interests." Mr. Adams's policy, Taylor says, would divide a nation into several interests, and unite power; his principle would divide power but unite the nation in one interest.<sup>30</sup> Under the former theory, the only reliance is upon an artificial and dangerous system of balances and orders; under the latter, "power having been first sparingly bestowed on the government, is next minutely divided, and then bound in the chains of responsibility." Adams does not trust the people to keep themselves, much less the government, under control. He has so little confidence in the people that he can only hope that the "three thieves can never carry off the bag of money, because they can never agree about its division."

This contention is further elaborated in Taylor's attack upon

<sup>28</sup> *Ibid.*, 400 ff. Taylor challenged the correctness of John Adams's appeal to natural law, but he does not hesitate to do the same thing himself, although, of course, with somewhat different conclusions. He states that "a theory or hypothesis cannot even pretend to plausibility, unless it is deduced from some general law of nature." *Ibid.*, 403. Again he says: "The basis of our policy . . . is the constancy of nature, in her moral, as well as in her physical operations."

<sup>29</sup> *Ibid.*, 437-46.

<sup>30</sup> *Ibid.*, 428-29. To those who are familiar with Adams's *Defence* it is unnecessary to say that Taylor is writing, although not very clearly, about the division of powers between the people and their government, and between the state and federal governments. Adams had dealt primarily with the division of powers among three departments in the same government. For the correspondence between the two men growing out of this book, see Adams's *Works*, VI, 455 ff.

the principle of authority, a principle which he believes to be at variance with the doctrine that the judgment and honesty of a nation are more likely to produce liberty and happiness than the judgment of a few rulers.<sup>31</sup> The principle of American government is that of dependability upon the judgment of the nation; it is the only one which can prevent nations from being converted "into the engines of an aspiring individual or a faction, for enslaving themselves, and parties into beasts, to be ridden by a few artful men into office." A government erected upon the principle that the few should decide and the many meekly submit will soon result in the substitution of slavery for liberty.<sup>32</sup>

In the United States, an aristocracy can be introduced only by laws for transferring property from the many to the few.<sup>33</sup> The landed interest can never form an aristocracy, for the simple reason that it is itself the majority interest, and it is the essential characteristic of an aristocracy that it be a minority and that it subsist upon the majority. Neither could the Cincinnati of the United States ever form a privileged order; because rank or title is in itself incompetent to such an end; "but the funding and banking system could; because such laws, without title, possess this competency."<sup>34</sup>

Four parties (the argument continues) have arisen in the United States; two of principle—the republican and the monarchical; two of privilege and interest—stock and patronage. Some attributed the existence of parties to the intrigues of Jefferson, to French influence, or to other transitory and fluctuating causes.

<sup>31</sup> *Ibid.*, 512 ff.

<sup>32</sup> *Ibid.*, 548-49.

<sup>33</sup> *Ibid.*, 551-79. Poverty may contemplate with toleration the wealth which flows from industry and talents; it is "justly exasperated against the wealth which flows from fraudulent laws." The introduction of aristocracy into the United States by law will result in unusually violent animosities between rich and poor, because in this country the means for controlling them are less. It is to the fraudulent legal modes of acquiring wealth that "mankind are indebted for the pernicious and impracticable idea of equalising property by law." Destroy the evils of legal privilege and monopoly and no more will be heard of the equally artificial and almost equally undesirable alternative of abolition of private property. *Ibid.*, 562-64.

<sup>34</sup> *Ibid.*, 571.



Such opinions are incorrect, and are proved so by the fact that parties continued after these temporary causes ceased to exist. The real cause, then, was the Hamiltonian financial system, the laws which enriched the minority at the expense of the majority.<sup>35</sup> As a result of these inequitable laws, the spirit of faction or party has developed. This spirit, Taylor believes, is not natural to free governments; "it is only natural to those where aristocracies or parties of interest are artificially created and combined by law. . . . Patrician and feudal parties were made by conquered lands; church parties by tythes, offerings and endowments; military parties, by wages; patronage parties, by offices, bribes and sinecures; and paper parties, by stock, interest and dividends."<sup>36</sup> If everyone were really in a position of equality before the law, these parties would come to an end. In the Constitution the principle of equality was applied to states by placing each state upon an equal position and forbidding partialities between them. And in his conclusion Taylor returns to the thesis that it is only by adherence to the good moral principles which he had earlier discussed that "this dreadful party tyranny" can be brought to an end. "If therefore, these essays should only prove, that it is the office of a republican government to protect, but not to bestow property, they may protract the period during which our government may remain the servant of the nation."<sup>37</sup>

#### -V-

If the *Inquiry* made a considerably belated appearance, Taylor's next book was distinctly a tract for the times. *Construction Construed, and Constitutions Vindicated* was published in 1820, and the chief subjects discussed in it were Marshall's opinion in the case of *McCulloch v. Maryland* (1819), and the

<sup>35</sup> *Ibid.*, 569.

<sup>36</sup> *Ibid.*, 571. For an earlier view of the causes of party in the United States see Taylor's letter to Jefferson, June 25, 1798. *John P. Branch Historical Papers*, II, 271-76. There he not only discusses the financial ills of the nation but also proposes several political remedies, among them short terms, rotation in office, and a new method of repealing laws.

<sup>37</sup> *Ibid.*, 656.

Missouri Compromise, which had been agreed to by Congress and approved by the President only a few months before the book's appearance.<sup>38</sup> But although these were the particular issues referred to, it remains that the central thesis of the work is that unlimited government is never justified.<sup>39</sup> The essential corollary to this principle is that the federal government of the United States was intended to be, and should be, surrounded by limitations upon its power. These limitations, Taylor finds, are fast being cut away by the agencies of that government, especially the Supreme Court.

In developing his argument against unlimited governments the writer devotes a chapter to a discussion of the theory of sovereignty. This term, he says, is not one which may be used with any justification of any government established in the United States.<sup>40</sup> Sovereignty is "by its nature a unit."<sup>41</sup> It is incapable of division, and it may not, therefore, be divided between Congress and the people. It must be in one or in the other. According to the principles of the American Revolution, sovereignty is really the natural right of self-government inherent in the people. Governments, on the other hand, have only conventional or limited powers. "The natural rights of self-govern-

<sup>38</sup> In a letter of January 19, 1821, Jefferson wrote: "If Congress fails to shield the States from dangers so palpable and so imminent, the States must shield themselves, and meet the invader foot to foot. . . . This is already half done by Colonel Taylor's book [which] is the most effectual retraction of our government to its original principles which has ever yet been sent by heaven to our aid. Every State in the Union should give a copy to every member they elect, as a standing instruction, and ours should set the example." *Writings* (ed. by Ford), X, 184.

<sup>39</sup> A government "possessing an absolute power to distribute property, according to the pleasure, the pride, the interest, the ambition, and the avarice of its administrators," is the master rather than the servant of the nation. *Construction Construed*, 12. In this country we have guarded against interference with the freedom of religion by the government, but we have failed adequately to guard against interference with property. The result has been that there has been created "a monied interest at the expense of the whole community, which is gradually obtaining an influence over the federal government, of the same kind with that possessed by a similar sect over the British Parliament." *Ibid.*, 233.

<sup>40</sup> Section 3.

<sup>41</sup> *Ibid.*, 27.

ment, and the consequent rights of dividing and limiting power, might have slept forever in theory, except for the American revolution; which seems to have been designed by Providence for the great purpose of demonstrating its (*sic*) practicability and effects."<sup>42</sup> As in the *Inquiry*, the divisions of power which Taylor was interested in were those between the people and their government, and between the state and the federal governments, rather than that between the three branches of one government.

In the formation of the state governments great care was taken to protect the rights and powers of the people against their governors; in the formation of the federal Constitution the ends which were to be pursued by the central government were carefully limited. The framers of that constitution overlooked, however, the possibilities of construction as a means of extending those powers beyond their legitimate limits. In the case of *McCulloch v. Maryland* the Supreme Court has held that the federal government has power to adopt means, even though the ends in view are themselves beyond the delegated powers of that government.<sup>43</sup> In that decision great reliance was placed upon the "necessary and proper" clause of the Constitution. But this section, if properly construed, restricts rather than enlarges the powers of Congress, because it explicitly limits the agencies of the central government to the specifically granted powers. Marshall's doctrine of implied powers is an equally unsound basis for extending federal powers, for when an implied power is confronted with a positive power, and a power reserved to the states is a positive one, the latter must hold.<sup>45</sup> The Constitution places no limitation upon the sphere of state taxation except in the taxing of imports and exports;<sup>46</sup> and the powers of the state and federal governments in the internal sphere were intended to be concurrent except where federal powers were limited. It follows, therefore, that the exemption of the bank

<sup>42</sup> *Ibid.*, 52.

<sup>43</sup> *Ibid.*, 82-84.

<sup>44</sup> *Ibid.*, 165.

<sup>45</sup> *Ibid.*, 171.

<sup>46</sup> *Ibid.*, 92 ff.

from state taxation results either in an inequality of taxation or a total exemption from it, both of which are inconsistent with the principles of free government, as well as contrary to the specific provisions of the Constitution.<sup>47</sup>

After discussing the bank decision throughout the whole of five chapters and parts of as many more, Taylor takes up the Missouri Compromise. He holds that it was not the question of slavery, but rather the idea of a balance of power between the two great sections of the country, that produced this absurd controversy and this even more absurd solution.<sup>48</sup> A balance of power between nations can but lead to hostility and war. A balance between sections in the same nation will have the same effect. The new system will divide and destroy the old confederation and turn Congress into a diplomatic body whose function will be to adjust the controversies which will be sure to arise.<sup>49</sup>

<sup>47</sup> Further on he says: "The federal is not a national government; it is a league between nations. By this league, a limited power only over persons and property was given to the representatives of the united nations. This power cannot be further extended under the pretext of *national* good, because the league does not create a national government." The exercise of sovereign powers over persons and property, "even by a government really national, and absolutely sovereign, has uniformly resulted in oppression, although the persons thus legislated out of natural rights, are actually represented; but under the federal government, in which local and personal interests are not, and cannot be represented, an exercise of these powers, utterly unnecessary to a fair and free government, must produce mischiefs of ten-fold magnitude. These local and personal interests were therefore left as politically and geographically arranged, into distinct compartments; and a federal was preferred to a national government, because that commixture of local interests, and inextricable sympathetic cohesion, which infuse into election and representation their substantial value, was stopt by the nature of the state governments, and could not be extended to a national government, by melting up the states into one vast empire." *Ibid.*, 234-35.

<sup>48</sup> *Ibid.*, 291.

<sup>49</sup> "The new confederation to be substituted for the old one, ought to be stated without disguise, that it may be duly estimated, and compared with its rival. It proposes to draw a geographical line between slavery and no-slavery; to train the people on each side of it, into an inveterate habit of squirting noisome provocations at each other through the press; and to create a degree of animosity as an ally to ambition and avarice, quite sufficient to induce a preponderating balance to exert its whole energy, in obtaining exclusive advantages. . . Congress would be converted. . . into a convention, meeting annually to make new bargains for obtaining a preponderance, and local advantages over each other; or in fact to make annually a new federal constitution. To those who saw the difficulty of

"The subject of internal slavery was definitely disposed of by the federal compact."<sup>50</sup> If we interfere with that settlement, we are preparing the way for all manner of troubles. Left alone, the evils of slavery will slowly be righted, as the history of the past thirty years shows, and a slow process of reformation is the only one which can successfully deal with a problem of this magnitude. Furthermore, Taylor argues at some length, the Compromise was unconstitutional. In attempting to legislate concerning the property rights of individuals, Congress greatly exceeded its delegated powers.<sup>51</sup>

If most of the discussion concerning the Missouri Compromise is a remarkably accurate prophecy as to the subsequent history of the struggle between the sections, as well as of the majority opinions in the Dred Scott case (1857), the concluding paragraph of the chapter is a thinly veiled foreshadowing of the Civil War: "There remains a right, anterior to every political power whatsoever, and alone sufficient to put the subject of slavery at rest; the natural right of self-defence. . . It is allowed on all hands, that danger to the slave-holding states lurks in their existing situation, however it has been produced; and it must be admitted, that the right of self-defence applies to that situation, of the necessity for which the parties exposed to the danger are the natural judges: Otherwise this right, the most sacred of all possessed by men, would be no right at all. I leave to the reader the application of these observations."

## VI

At least as early as 1793 Taylor had written pamphlets against the financial policy of the federal government. In 1822 he published a book devoted to the same theme. But whereas the earlier productions had as the main subjects of their attack the funding of the debt, the assumption of state debts, and the establishment of the bank, this book was aimed against the

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making that we now have, the consequences of this species of policy will be quite plain." *Ibid.*, 292.

<sup>50</sup> *Ibid.*, 294.

<sup>51</sup> *Ibid.*, 295-314.

protective policy which was just beginning to creep into tariff legislation. *Tyranny Unmasked* is the rather sensational title given to what is probably the first extensive argument against the protectionist theory in the United States. Taylor takes as the subject for his discussion the report of the Congressional committee on manufactures under date of January 15, 1821. This report was in large part the result of Clay's continued arguments in favor of the "American system."

The sage of Hazelwood was a throughgoing believer in the doctrine of *laissez faire*, as all of his earlier writings indicate very clearly, and the theory which he opposes to that of the protectionists is an adaptation of Adam Smith's principles: "The division of labour, if left free, invigorates industry, increases skill, and diffuses general benefits. . . . A monopoly established to transfer the profits of labour from south to north, is a precedent for transferring such profits from the upper to the lower States on the Mississippi. In both cases the monopoly would be bestowed on rich capitalists, and be paid by poor industry."<sup>52</sup> A government established on the principle of equality before the law will, if the protective system be adopted, serve the small minority at the expense of the great majority. In order that a group of capitalists may be enriched, it will inflict a deep wound upon all of the natural divisions of labour.<sup>53</sup> The discrimination against the agriculturists would be particularly great because the tariff would not merely raise the prices of manufactured articles which the farmers have to buy; it would also have the result of shutting agricultural products out of foreign markets by prohibiting to them "sundry exchanges, thus lowering the value of such products."<sup>54</sup>

Taylor was not content to attack the protectionist principle as an isolated bit of doctrine. As might be expected, he finds that it is only one aspect of the tendency toward the creation of a tyrannical government in the United States, a tendency which has as its main ear-marks the extension of federal powers and the building up of "an overflowing treasury."<sup>55</sup> It was one of

<sup>52</sup> *Tyranny Unmasked*, 32-33.

<sup>53</sup> *Ibid.*, 40.

<sup>54</sup> *Ibid.*, 222.

<sup>55</sup> *Ibid.*, 4-21.

the fundamentals of his creed that consolidation and a too well supplied treasury lead to an oppressive government. In order to prevent this unhappy state of affairs from going any further he proposes a mutual state-federal veto on all constitutional questions.<sup>56</sup> The framers of the Constitution did not intend that the President or Congress should, with the consent of the Supreme Court, exercise powers prohibited to the federal government by that document. Since the Court has failed to act as a check upon the ambitions of the central government, it follows that only the state governments can serve that necessary function. It is eminently sound that they should do so, and it is the political departments in the states which should act to resist unconstitutional laws. "The State governments are in fact tribunes of the people, entrusted with rights bestowed for the preservation of their liberty, and if they surrender these rights, by surrendering the power of defending them, they will be as faithful to the people, as the Roman tribunes would have been had they surrendered their veto to the consuls and senate, or to the praetors."<sup>57</sup> There is no danger in such a concurrent veto—to give it the name later used by Calhoun—for the states would act only to prevent the introduction of an innovation; they could not usurp power. On the other hand, the Court, particularly in the case of *McCulloch v. Maryland*, has permitted the assumption by the federal government of new and constitutionally unjustified powers. As an additional safeguard to the mutual veto there is the check of popular election; no such check exists upon the power of the Supreme Court.

## VII

Since nearly everything that Taylor ever wrote touched upon the question of state rights, it was peculiarly fitting that his last book, *New Views of the Constitution of the United States* (1823), should be devoted entirely to this problem. This book presents one of the most extensive discussions ever prepared of the historico-legal argument in favor of decentralized government in the United States. Like much of Taylor's other writing, it was a pre-

<sup>56</sup> *Ibid.*, 260 ff.

<sup>57</sup> *Ibid.*, 263.

liminary to the later and more bitter stages of the state rights and nullification controversies, as well as an early justification of secession. During the next three decades many southern writers drew from it the materials out of which they framed the arguments which served as the literary defence of southern sectionalism.

Taylor begins his discussion in this volume with the contention that the Declaration of Independence is the basis of American government. This document, he says, offers proof that union and the sovereignty of the states are entirely compatible.<sup>58</sup> The states were independent political communities in 1776, and they have never surrendered to the central government anything except certain specified powers. The whole course of proceedings in the convention which framed the Constitution is indicative of the fact that this was intended to be a federal, and not a national, government. In their instructions to their delegates the states used the word "federal," carefully avoiding "national."<sup>59</sup> In the Randolph resolutions the term "national" was used, but that term was definitely rejected by the convention.<sup>60</sup> A negative over state laws was proposed by the Pinckney plan; it was therefore carefully considered and deliberately rejected. No one ever went so far as to suggest that a single court should have such a negative. This "political monster" is the result of subsequent construction.<sup>61</sup> When, on June 25, the term "United States" was substituted for "national," it meant that the idea of a consoli-

<sup>58</sup> "If the declaration of independence is not obligatory, our entire political fabrick has lost its magna charta, and is without any solid foundation. But if it is the basis of our form of government, it is the true expositor of the principles and terms we have adopted. The word 'united' is used in conjunction with the phrase 'free and independent states,' and this association recognises a compatibility between the sovereignty and the union of the several states." *New Views of the United States*, 2. Although Taylor does not make clear at this point whether he believes that sovereignty is found in the people or in the governments of the states, it may be presumed from the discussion in *Construction Construed* that it is in the people. See Sec. V above.

<sup>59</sup> *Ibid.*, 14.

<sup>60</sup> Taylor based his account of the convention upon its journal and, to a lesser extent, upon the notes taken by Yates and the account by Luther Martin. Madison's notes were not published until many years later.

<sup>61</sup> *Ibid.*, 19. See also 44.



dated government had been defeated. Furthermore, those who argued in favor of a supreme national government—Hamilton, Randolph, and Madison—believed that they had failed.<sup>62</sup> The proceedings of this convention show, then, that the central government of the United States is not a national but a federal one. It possesses no innate sovereignty. "It is conventional, and of course subordinate to the sovereignties by which it was formed. . . . In the creation of a federal government, the states exercised the highest act of sovereignty, and they may, if they please, repeat the proof of their sovereignty, by its annihilation."<sup>63</sup>

He then comes to the problem which was to be argued so frequently a few years later: In this federal system, who is to decide in case of dispute between the central and state governments? His conclusion is much the same as that found in *Tyranny Unmasked*. The state and federal governments should exercise a mutual right of control.<sup>64</sup> For a federal body (the Supreme Court) to decide controversies of jurisdiction between the federal and state governments would be to make the former a judge in a case involving itself.<sup>65</sup> According to the plain words of the Constitution, the federal legislature is strictly limited in its powers. The federal courts are also limited and to the same degree. There "would have been a manifest absurdity in coupling a supreme national judiciary with a legislature not national."<sup>66</sup> The supremacy of the Supreme Court only lifts it above the inferior federal courts, not above the supremacy of the Constitution.<sup>67</sup>

<sup>62</sup> *Ibid.*, 32; also 49, 63. For Madison's answer to Taylor's charge that he favored a consolidated government, see his letters to R. S. Garnett and N. P. Trist in his *Writings* (ed. by Hunt), IX, 176, 475.

<sup>63</sup> *Ibid.*, 37. For summary of his argument see 176-77.

<sup>64</sup> *Ibid.*, 147.

<sup>65</sup> *Ibid.*, 121.

<sup>66</sup> *Ibid.*, 127.

<sup>67</sup> *Ibid.*, 142. "The supreme court was not intrusted with the trial of impeachments, as was proposed in the convention, because its judgments might deprive individuals of a few political rights; but it is contended that it possesses, constructively, a power to try impeachments of whole states, and to deprive them of political rights, infinitely more important. It was not allowed to disqualify an individual to hold a federal office, one political right, but it is said to be tacitly authorized to deprive all the individuals of the United States of reserved constitutional rights without any restriction. It was not intrusted with a power to

If it was fitting that Taylor's last book should have been devoted to the state rights issue, it was equally appropriate that that book should have as its penultimate chapter a sixty-page discussion of the relative merits of centralized and federal governments.<sup>68</sup> The author's opinion on that point is summed up in these sentences: "It seems to be nature's law, that every species of concentrated sovereignty over extensive territories, whether monarchical, aristocratical, democratical, or mixed, must be despotick. In no case has a concentrated power over great territories been sustained, except by mercenary armies; and wherever power is thus sustained, despotism is the consequence." The geography of this country and the character of the people, he continues, "unite to demonstrate that the ignorance and partiality of a concentrated form of government, can only be enforced by armies; and the peculiar ability of the states to resist, promises that resistance would be violent; so that a national government must either be precarious or despotick. By dividing power between the federal and state governments, local partialities and oppressions, the common causes of revolution, are obliterated from our system."<sup>69</sup>

### VIII

Even a brief survey of the voluminous writings of John Taylor of Caroline demonstrates the truth of Beveridge's remark that Taylor was "the most fruitful of Republican intellects."<sup>70</sup> More than that, he was the most consistent. There are not a few in-

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deprive the descendants of a guilty individual of any political rights whatsoever; but, say the consolidators, it may deprive all the descendants of the present generation of political rights, by its precedents . . . to confound legislative and judicial power in the same body of men, creates a tyranny, which both makes the law and applies the sword; and to enable a single court to cut off state rights by a supreme power of construing the constitution, would confound the power of creating a constitution, with the power of construing laws, and render these rights as precarious, as human heads are, under an absolute monarchy." *Ibid.*, 151-52.

<sup>68</sup> *Ibid.*, 237 ff. The last chapter is entitled "Construction" and consists of long extracts from Swift's allegory, "Tale of a Tub," with applications to the methods of the Americans who are construing this into a nationalistic system.

<sup>69</sup> *Ibid.*, 238.

<sup>70</sup> *Life of John Marshall*, IV, 58 n.

consistencies to be found in the construction of his arguments, but the way he adhered to certain general principles during a political and literary career of nearly fifty years is truly remarkable. Doubtless such consistency is not greatly to his credit, but it does inspire one with a certain admiration for the hard-headed old southerner who clung so passionately to the doctrines which he espoused during the opening years of the American Revolution. Furthermore, it is this continued adherence to certain aspects of the radical theory of the Revolution which helps to illuminate the course of development of American politics between 1775 and the Civil War. Taylor began his writings under the influence of Patrick Henry, carried them on as a supporter of the Jeffersonian movement, and ended by being the prophet of Jackson's particularistic policies and Calhoun's philosophy of government. His writings illustrate, as do those of no other man, the way in which the class and section to which he belonged adopted successive political and legal attitudes, all based on certain common principles, toward the movement for union and toward the growing supremacy in that union of another section with somewhat different interests and ideals.

Of his first speeches and writings little is known except that they were representative of the ideas of Patrick Henry and George Mason. It was during the early stages of Jefferson's opposition to the program of Hamilton that Taylor came to be a publicist of national reputation. The early pamphlets, *Arator* and the *Inquiry*, contain a more complete exposition of the principles of that movement than is to be found in any other group of writings. Popular sovereignty, *laissez faire*, strict construction of federal powers, the agrarian basis of American government, simplicity and economy in government—these and the other aspects of the Jeffersonian creed he dealt with over and over again. Moreover, Taylor carried on the battle in favor of these principles long after Jefferson had retired to Monticello, after Madison had virtually gone over to the enemy by adopting many of the theories advocated by the young nationalists, and while Calhoun was just beginning his career as one of the leaders

among this nationalistic group. His *Inquiry* is evidently an attempt to bring the new Republicans back to the old principles.

The same principles are applied in his final trilogy to more definitely contemporary problems. In *Construction Construed* he makes out an excellent case against one of the greatest opinions of that master of constitutional construction, John Marshall. And he prophecies very accurately the difficulties which the Missouri Compromise was to bring in its train, and indicates much of the argument which the majority of the Supreme Court was to take, more than thirty years later, in declaring that compromise unconstitutional. In the *Inquiry* Taylor had advocated the principle of rotation in office; this book furnishes much of the argument which Jackson was to rely upon in his war against the bank and in his opposition to federal aid to internal improvements, discusses the theory of indivisible sovereignty which was later to be used in Calhoun's famous *Discourse*, and sketches in the arguments which were employed to justify secession and "the war for southern independence." Two years later, in *Tyranny Unmasked*, he developed his earlier arguments against the comparatively innocuous tariff of the Federalist régime into a full-fledged philosophy of free trade as against the protectionist theory of Clay. Believing that the tariff was only one aspect of the dangerous process of centralization going on in the United States, he discussed at some length the principle of a state veto upon unconstitutional acts of Congress about which he had written to Jefferson twenty-four years before when he proposed "the right of the State governments to expound the constitution." It will be remembered that it was shortly after this that Calhoun abandoned his nationalistic views and became the leader of the opposition to the protective system, and that, following the passage of the "tariff of abominations" in 1828, he discovered the principle of nullification, which he later modified and wrote into his philosophical works as the principle of the concurrent veto. In Taylor's last book, *New Views of the Constitution*, his earlier state-rights arguments are elaborated and bolstered by a long discussion of American constitutional history. Practically all of the contentions which Upshur,

Calhoun, and other southern defenders of state rights were to use in opposition to national supremacy and to the theory that the Supreme Court is the final interpreter of the Constitution are set forth in this work:

In view of the unrivaled comprehensiveness with which Taylor dealt with nearly all aspects of the theory of limited political power which played an important part in American history between 1775 and 1861, it is somewhat difficult to understand why his writings have received so little attention since his death. One reason is probably to be found in the time of their appearance. With the exception of his early pamphlets, his works were published either too late or too early for popular acceptance. The *Inquiry* would have been opportune in the seventeen-nineties; it appeared at a time when there was little interest in the principles with which it dealt. The last three books came before the South was ready to begin its final and vigorous advance toward nullification and secession. But the lack of timeliness would not have been an insuperable obstacle to great popularity in later years, had it not been for Taylor's unfortunate literary style. If he had been able to express his views with less repetition, more clarity, and a less quaintly awkward style, his books might easily have become the best known expositions of southern sectionalism. There are excellent bits of writing scattered through his three thousand pages; but they are obscured in dull and unnecessary verbiage. It is easy to sympathize with a remark of John Randolph in a letter to Garnett about one of Taylor's books: "For heaven's sake, get some worthy person to do the second edition into *English*." No other significant writings in American political thought, except perhaps the second and third parts of John Adams's *Défence of the Constitutions* and the same author's *Discourse on Davila*, place such obstacles in the path of the reader. This is not to say that Taylor's books were not read by many leaders of his section; for they were both read and used. It is only to say that they would have received far more contemporary attention, and might since have become the classic statements of both the earlier and later phases of the Jeffersonian movement, had they been condensed to one-third their volume and written in a more attractive style.

## GOVERNMENT AND THE PRESS<sup>1</sup>

**Reporting the Political News at Washington.** First of all, let me say that there is no question on which you can develop more controversy than the reporting of political news. Within the profession, within the newspaper business, there is a great deal of controversy, and has been for many years, particularly as to whether political news is fairly reported, impartially reported. I have listened to a good deal of discussion on that point. I have recognized, as have others in the newspaper business, the trend of the times—the so-called decrease in the strength of the editorial page, for instance, and the increase in the amount of material of a semi-editorial flavor printed in the news columns.

The first branch of this topic, namely, reporting political news as it affects our domestic politics, seems to me to require an understanding, first, of the pressure and the difficulties that newspaper men face in handling news of campaigns and, second, of some of the pitfalls which they encounter between campaigns. I make that division arbitrarily, because the subject seems to divide itself in my own mind into those two general fields.

It is much easier to report political news between campaigns than it is during campaigns. For one thing, your audience is not sensitive between campaigns. Especially just after a campaign has been concluded there is a sort of feeling that the victorious candidate, the newly inaugurated President, the newly introduced Congress, should have what we call popularly a square deal—as if, by inference, they did not have a square deal before. Newspaper men call the first few months of a newly elected President's term the "honeymoon period." After a certain time there is less tolerance again; the "honeymoon" is supposed to be over, and generosity of attitude on the part of the press toward the triumphant candidate becomes less apparent. This illustrates, in passing, what I mean by the sensitiveness of the audience; and the newspaper man is sensitive to this thing we call public opinion. Perhaps he should not be. He should be as judicial at one time as another, and he should be just as scrupulously impartial at one time as another.

<sup>1</sup> The two papers that follow are adapted from addresses delivered by the authors at the meeting of the American Political Science Association in December, 1927. Mr. Lawrence is president of the Consolidated Press Association, and also of the *United States Daily*. Mr. Essary is Washington correspondent of the *Baltimore Sun*. *Man. Ed.*

Newspapers today are all—at least they profess to be—independent. I would like myself to put quotation marks around the word “independent.” Every time you send a questionnaire to newspapers listed in the newspaper directory, and ask them for their political affiliations, they invariably reply “independent”; and there is no way to get away from that classification. Some of them, which have been a little more liberal-minded, have chosen the classifications “independent Republican” and “independent Democrat”—as if there could be that kind of classification. But, after all, perhaps the best way to classify a newspaper is to find out which presidential candidates it has supported over a period of time; and you can make up your mind whether or not a paper that has never supported any candidate of another party is actually independent.

I mention this because, much as we might not like to admit it, the news content of the newspapers of today depends to no small extent on the editorial policies of those papers. This is less true today than it was ten years ago, but the condition still exists. We must recognize the fact that, whether the editor is present or not, the people who select the material for the newspaper each day are conscious of the editorial policies of the publication; and hence a very good thing is frequently relegated to some inside page or the waste-basket if it is favorable to the cause they are opposing, while the meritorious thing about the candidate they are supporting is usually put on the first page and given all the prominence necessary. That is a very important factor in political campaigns.

We have also the strictly partisan newspapers, which make no pretense of being anything else, which not only print every item of news that supports the candidate in whom they are interested, but which print also the manufactured stuff of his campaign; and there is more of that printed than you can possibly imagine. I do not suppose that the headquarters of our political parties would like to give out the facts and figures on those things. But a good many of us know that a great deal of such manufactured matter is printed, particularly in the small newspapers. What I object to is that it is not labeled. It is marked “Washington,” and is sent out with a special date line and appears to be written by someone supposed to be disinterested. In political campaigns we have that to contend with, and we have also the activities of the various headquarters which are trying to manipulate the natural channels of news—trying to “make news.” A good many “stunts” are performed.

during campaigns purely for publicity purposes. But I personally doubt very much whether the influence of what is printed during the political campaign amounts to much.

I have rather held for many years to the belief that the material that is printed between campaigns is the most important part of political news. There we have some very interesting situations. Writing, as I do, for about one hundred sixty newspapers of all political complexions, a dispatch every day, I find that the complaints of leaning to this side or the other are apt to come between campaigns when one party is in charge of the government and the other party is absent. When the Congress is adjourned there seems to be dissatisfaction on the part of newspapers during a period in which the minority is not represented—a situation with which I have a great deal of sympathy, but which I hardly know how we could correct. Certainly when Congress has adjourned for eight or nine months of the year, and the executive branch of the government is in the possession of either the Democratic or the Republican party, all the news that emanates from Washington is about that particular administration. Members of Congress who ought to be dissenting are on trips to Europe or Panama or Hawaii, and we have no minority dissent.

So between campaigns the party in power gets much the better of it, and I believe that the party out of power, or at least the newspapers which support the party out of power, are more sensitive at that time. I know that this is true because the same phenomenon occurs when a Republican administration is in power as when a Democratic administration is in power. You usually find the same kind of dissatisfaction that nobody is at hand to conduct a crusade and expose the party in office. There is a little of that at all times, but between campaigns unquestionably the party in power gets most of the publicity and benefits immensely. Of course, in a sense, what an administration does, what it is trying to accomplish, is political news between campaigns, and a man may make a wonderful record on a particular activity a year or two after he has been elected. A member of Congress may do something at a time when he is not particularly in the public eye for reelection, and he derives a benefit which is lasting. I believe that we form impressions about our public men, especially those who are up for elective offices, during periods when no campaign is in progress; and unless they do something to upset them, we are likely to keep those impressions at the polls.



The news side of the newspaper is, therefore, the one that I should watch most closely if I were a candidate for office. I believe that the reporting of the activities of government officials in a fair way will have, in its last analysis, more effect on the voter in the making of public opinion than the interpretative articles of some of our editorial pages.

Those who contend that the editorial page has declined in strength have failed to take note, it seems to me, of the great improvement on the news side of the newspaper, where many more interpretative articles are printed today than ever before. In the old days the editorial page gave you background and information besides. It did not always tell you how to think; it often gave you information on which to base your opinion. Today, if you are reading the newspapers closely, you are getting most of that out of the news columns.

Now, we may say that the reporting of political news really begins back home in the local units, in the cities and counties and states, and that we should consider that phase of it as much as we should the phase of the national government. From time to time I hear discussions on that point. I find, too, that the pressure from the public on the editor is invariably to make the newspaper's columns fair. If you report a mass-meeting conducted by Democrats and do not give it a square deal, it will make enemies for your paper. In many a city and state campaign the newspapers which do not care to take sides particularly, or at least actively, in the campaign content themselves with an adequate presentation of the issues of the campaign in their news columns; and you will find that candidates will be just as happy if they are given an even break in the news columns as if they were discussed editorially from day to day in the editorial columns. I know of one conspicuous case in one of the western states in which a certain newspaper took part. It was very pro-Republican, and I know that the Democratic nominee was very much dissatisfied with the situation in the news columns, although content with what was happening in the editorial columns.

From what I have said you may infer that I think that the strictly political side is the vital thing in the making of public opinion, and I hope I am surprising you, and yet pleasantly, when I say that there is a growing interest in the non-political side. I feel that the Washington correspondent of the future, while he will always have to know his politics, will be better equipped for dealing with the news if he knows his economics. I feel that we are in the midst of an economic era. Our political questions have an economic background. You can hardly touch a question that is in dispute today without discovering

that it is an economic question, and that the controversy is mostly between those who understand the fundamentals of economics and those who do not. It is a very serious thing, because our newspapers, built as they are on the theory that they must satisfy all groups, are unable, evidently, to present all the information necessary to clarify the public mind on some of these vital questions.

I was very much surprised last autumn when I delivered a talk over the radio through a net-work of stations to discover in my mail afterwards that many people had learned for the first time what the McNary-Haugen bill was. This technical subject—an economic subject, after all—had been in the press for three or four years. The newspapers had ample opportunity to explain it. And yet from many, many letters I received from people who evidently were newspaper readers, they had not had a clear presentation, or, at least, one that they thought they understood. Now that evidently means that while we are touching in our newspapers the high spots of the news, we are not driving home the background, or else the newspaper reader is superficial and is not availing himself or herself of the information presented in the newspapers.

It is true that the newspaper assumes that you read it regularly and constantly. Perhaps you have noticed how rarely a newspaper repeats a news item. If you miss a single issue of a newspaper, you miss that event. You miss the discovery of it, you miss the second story of it, and then the next time it is mentioned it is referred to in parentheses, so to speak, as if you knew. For instance, if you did not happen to read the newspapers on the day on which the report of the Agent-General of Reparations was presented, when you picked up the newspapers of succeeding weeks you found discussion the significance of which you did not grasp. Unless you went back to the day on which the report was printed, you were not likely to know from the newspapers what the Agent-General had recommended. I could give other illustrations. No doubt every one has noticed the same thing. I believe that this must be the fundamental reason why the newspaper reader is unacquainted with the background of our fundamental issues.

The newspaper can hardly be blamed for its policy under the present business set-up of the publishing world. I always feel that I should defend the newspaper against attacks, particularly when I know that there is an undercurrent of dissatisfaction from the so-called class-group with our newspapers. Bear in mind that the newspaper, business institution that it is, must pay its expenses, must pay them very largely

out of advertising. A very small part of the income of the newspaper comes directly from the reader. It may be an unfair set-up, but it is a fact; the advertising of the newspapers comes, unfortunately, out of consideration of the quantity, not the quality; and it is the demand for quantity of readers which makes it incumbent upon most publishers to get as many readers as they can, irrespective of who they are and what they are, so as to be able to satisfy the buyer of space, who invariably wants to know "how many." Thus the newspaper becomes a sort of omnibus. It is supposed to satisfy every group. It has a sporting page to reach a certain group, it has a financial page to reach a certain group, it has a comic page to reach the juveniles, and it has certain other things—women's features, and so on down the line—until you have in the newspaper a sort of composite. You cannot expect a newspaper which is striving to reach all those groups to give its entire news contents over to any one group. You cannot expect a newspaper to report even national news out of proportion to other news.

You may pick out almost any newspaper, and you will find that the ratio of news to advertising is frequently uneven—more often it is something like sixty-five per cent advertising to thirty-five per cent news. This thirty-five per cent news content must be divided between entertainment and information. Take as an illustration even the *New York Times*, which is striving to satisfy the serious-minded reader; even the *Times* must give space to all kinds of activities to an extent that hardly permits the publication of the amount of information, in the way that the *London Times* gives it, on matters of state. We have nothing in this country that compares with the *London Times*; and perhaps that is one of the reasons why we are not inducing more able men to enter public life. We are not presenting to them the constructive side of government as we should.

One of the reasons, too, may be the tendency to caricature and ridicule, which has grown so rapidly during the last several years. I believe that the pendulum has swung too far in that direction. I believe that those of us who want better men in public life should consider how discouraging it is to the average man and woman who might enter public life to see men ridiculed, and frequently suspected of unworthy motives, when they may be doing a conscientious piece of work. For instance, away from Washington you get an impression of Congress that is not altogether pleasing; and sometimes you get the same impression there. It depends upon how you are going—how seriously you pursue the subject. Men and women in Congress, chosen as they are by

their districts back home, are very good as individuals go. They are trying to do their job. Their constituents are driving them in one direction or the other. Most of them are trying to serve the people, and they are unnoticed by the newspapers for the most part. About the only times when they get into the press are when they do something sensational or are in the midst of a controversy that may be in the public eye. We do not, in other words, always use the press to encourage men who are in public life; and it all goes back to the fact that we have not the space in our newspapers to devote to the national government. It is a sad thing for a newspaper man to confess; but it is true; it is because the newspaper has become all things to all men. It is very important to have a record of what goes on in our government. But it is more important that the people should take an interest in what is going on in that government; and under our present scheme of things we are not getting that interest.

All this has its reaction in Washington. Nothing is more discouraging to the senators and to the members of the House themselves than the empty galleries, including the press galleries, and the fact that the newspapers pay no attention to the things on which members of Congress spend days and nights working. You cannot expect men to work for the public interest when no attention is paid to what they are doing. Unhappily, the reporting of that kind of news is restricted by urgent space considerations. We do not get the quantity of it printed that we should.<sup>2</sup>

There is in Washington a storehouse of information available to the public for the asking, and the departments tell me that the number of inquiries each year is increasing; that business men, for instance, are asking the government more questions each year; that the government is coöperating more and more with the public. Indeed, I believe that the newspapers are responsible for placing too great emphasis on the regulatory side of government and not enough on the coöperative side of government. The government is collecting information from one end of the country to the other, to make it available to the people.

<sup>2</sup> The *United States Daily*, of which Mr. Lawrence is president, represents a highly significant step toward remedying this situation. There had been earlier attempts to assemble and publish the sort of information referred to, but they were largely futile, and until the *Daily* was founded no one had tried its now well-known and very successful formula of putting this material into a newspaper carrying advertising, and conveying to readers authentic and clearly presented governmental information very much as the variegated contents of ordinary newspapers are conveyed. *Man. Ed.*

Publications, pamphlets and documents, are being printed at public expense, and usually are distributed at nominal charges. If the newspapers are unable to give space to these many things, we must do what we can to let people know what is available, so that those who are interested may be aware of the material and have it sent to them.

I wish I could say to you that we have in this country an unprejudiced handling of political news, because it would be fine to think that we are practicing impartiality in presenting to the people the information on which they base their judgments; but unfortunately it is not so. The partisan element enters into it very strongly; it enters into it even to the extent that the officials themselves frequently in describing the activities of their offices insert a prejudice which is recognized by the opposite side. You have heard a good deal of criticism from time to time about the use by government officials of their offices to propagandize the particular things in which they are interested and to advertise themselves. There is a natural tendency, perhaps, on the part of human beings to emphasize the work in which they are engaged. I believe that this in itself is not so harmful as the tendency to color the news according to the wishes of the newspapers or publications. I am happy to say that the situation in this respect is constantly being improved. But I am telling you no secret, I know, when I tell you that there are in the House of Representatives a good many correspondents who are the secretaries to congressmen, who write for their local newspapers, and who necessarily cannot present a very unbiased account of what their employers are doing.

We have tried in the press galleries of Congress to eliminate men who are in the pay of organizations and associations that have legislation pending. No man can be admitted to the press galleries who does not sign a pledge that he has no connection with any organization which has legislation pending. A code of ethics has been developed. The Washington correspondents are trying to enforce that code from time to time, but a good deal of this matter gets out just the same, and there is no law against a correspondent sending out news of Congress to serve a special interest, even though he does not go to the press galleries. Admission to the press galleries is not so important to the man who can go out and obtain information from various sources. Some change for the better will undoubtedly take place as the public grows more familiar with the problem here under discussion.

Then we have the difficulties with which the press services are faced. Again and again a press service is accused of being partisan, of favoring

this candidate or that candidate. I remember that in the campaign of 1912 I was reporting for the Associated Press. I was assigned to go along with Governor Wilson, and there was another Associated Press reporter with President Taft and a third with Colonel Roosevelt, and we used to compare results the morning after to see what the other candidates had obtained in the way of space and the number of words. It was pretty well balanced. The difficulty was that President Taft was not at that time making many trips, and hence there was considerable disappointment in his organization that he was not sharing the wires with Colonel Roosevelt and Governor Wilson, who were out on speech-making tours.

Frequently it is the fault of the candidate, who does not use his opportunities as much as he might; for the most part, the newspaper men engaged in distributing news for the press services are fair and honest and are not chargeable with any of the sins of omission that I have just described. The press services, nevertheless, are accused of bias. Scarcely a campaign goes by that somebody does not think that it is the avowed purpose of the press associations to advance the cause of some particular candidate. Sometimes it looks that way because several days go by without anything from the other candidate, and it looks as if one candidate has all the space.

Then, too, news breaks at inconvenient times. A world series game occurs on the same day that someone makes a very important speech, and on that occasion that speech must be cut to make way for the details of the game. I shall never forget an occasion when I was travelling with Woodrow Wilson and one of the newspaper men suggested to him that a rather important speech that he had intended to deliver on a succeeding day should be postponed to another occasion. He asked why, and the newspaper man said, "Well, the world series is on tomorrow, and you won't get anything much printed on it." Mr. Wilson simply sighed and said that things had come to a pretty pass when public affairs had to be conducted that way; and yet the man who made the suggestion was friendly. There is no doubt that the candidate who selects the occasion and opportunity for publicity frequently gets the better of it.

I know something also on the other side of the problem. One day some years ago a certain political treasurer had to make a report to Congress at a time when it was investigating campaign expenditures, and he had one or two uncomfortable facts to disclose. He selected a day during the world series. I believe that the incident was covered in only a couple of paragraphs on inside pages.

The reporting of political news as such will be transcended in the next few years, in my judgment, by the reporting of economic news. That will have a great bearing on our politics. We are talking about tariff revision; we are talking about the financing of foreign countries through private capital; we are talking about farm relief. All are matters of economics. We face large economic problems of flood control, the use of water power, the development of inland waterways, government ownership in one form or another, the power of the central government as contrasted with what the obligations and powers of the states ought to be. As the country grows more closely knit, as the telephone, telegraph, radio, air mail, make us a unit, so to speak—certainly a political unit—as we grow more and more homogeneous in our characteristics, these great economic problems will require the best thought that we can bring to bear through an impartial press.

DAVID LAWRENCE.

*Washington, D. C.*

**President, Congress, and the Press Correspondents.** It must be apparent to all thoughtful readers of American newspapers that Washington has become the great national news center, perhaps the greatest single news center in all the world. This has come about partly through an ever increasing centralization of power in the federal government, power that extends in a direct line to every basic industry in the nation as well as to our political, our cultural, and our social relations. Also it has come about, in part, through the movement to Washington of literally hundreds of national and international organizations.

Practically every interest in our life as a nation responds in a degree to the activities and vibrations of some agency of the government. These interests, either consciously or unconsciously, have learned to listen for their master's voice in Washington. The great banking and credit system, for example, looks to the Federal Reserve Board for its inspiration. Wall Street, sometimes regarded as a sort of super-government, is reacting more and more to federal orders, decrees, or mere gestures. The railroads bend to the will of the Interstate Commerce Commission; the mercantile marine to that of the Shipping Board. Agriculture seeks its panacea at the hands of Congress. Organized labor lives side by side with that body. Education is yielding to federal supervision, as is highway construction, water-power development, scientific research, foreign trade, commercial practices, and a score of other interests, great or small. There was a time when the federal

government concerned itself primarily with the national defense, delivery of the mails, maintenance of navigable rivers and harbors, enforcement of federal statutes, guardianship of the Indians, currency, payment of pensions, control of public lands, and a few minor matters. But that time has passed; indeed, it is almost forgotten.

It is because of the colossal influence of the government, and of the interests that revolve about it, upon the country at large that American newspapers have found it both desirable and necessary to maintain in Washington more than five hundred active telegraphic correspondents, not to mention another regiment of writers for magazines, trade papers, and religious publications. From a purely professional view-point, Washington correspondence has now become institutionalized. It has become a very vital part of the make-up of every progressive newspaper. From a public point of view, the corps of Washington correspondents may be regarded as a body of unofficial ambassadors of the American people, at the seat of government. These men are the eyes and ears of the country at Washington. It is largely upon their reports of what transpires at the White House, in Congress, and in the executive departments that the public relies for its information as to the acts and policies of the federal organism. It is upon this information primarily that the great body of the people bases its political judgments. This involves a very grave responsibility on the part of these writers. It demands of them scrupulous fairness and as near literal accuracy as may be possible, within human limitations, in the matter which is daily spread before their millions of readers.

It should be reassuring to the country to know that there is literal and absolute freedom of the press in its relations with the federal government in so far as any actual, implied, or attempted control over what is written in Washington is concerned. This means that every Washington correspondent may write at any time anything that impresses him as legitimate news, subject only to those confidences which he must respect and subject to certain rules which may be laid down, e. g., as to a direct quotation of the President. Neither Congress nor the administration has any right, nor presumes to have any, to discipline any correspondent, except when one of these rules is violated. His report may be objected to and protested against on the floor of Congress. Or a statesman, on occasion, may take matters in his own hands and physically assault the journalist who has given offense. This has happened many times, but without serious casualty. The point I



make, however, is that no censorship in any form is applied; and none could be enforced, were it attempted.

Such discipline as is imposed is laid upon the members of the corps by the corps itself. Under an act of Congress, the press galleries of the House and Senate are placed under the absolute control of a standing committee of correspondents. This committee passes upon the credentials of all newspaper men seeking admission. Rules are laid down that these men must have no personal interest in any pending legislation; must represent no outside interest (particularly a chamber of commerce or a stock exchange), and must in all instances be telegraphic correspondents. If a correspondent is engaged in any press agenting, he is required to post the fact on the gallery bulletin board and must identify his client. Beyond these few regulations, we are free to observe and to write what we may please regarding Congressional activities.

A recent example of disciplinary action on the part of the standing committee might be cited at this point. The correspondent of a Philadelphia newspaper was found a few months ago to be on the payroll of the Washington headquarters of the so-called Power Trust. This fact was brought out in sworn testimony before the Federal Trade Commission. The correspondent in question might have been within his rights if he had given public notice of his connection to the press galleries and if he had set up the claim that he was a press agent. But he did neither. On the contrary, his private employers, when called upon to explain his association with themselves, went to pains to explain that he was not a press agent but a "mere tip-off man." There was no condoning such a relationship, of course, and although the correspondent enjoyed great personal popularity, the standing committee barred him from the press galleries and his newspaper promptly discharged him from its service.

Because of the controversy that flares up from time to time over what is described as inspired publicity at the White House and over the relationship of the press to the President, it might be of interest to set forth the exact truth regarding that relationship, how it is maintained, and how it results.

In recent years the White House has assumed a greater degree of news importance than in the more distant past. A President who takes his rôle seriously as party chieftain becomes the fountain head of Congressional as well as Administration policies. This was true of Roosevelt, of Wilson, and, in a sense, of Taft and Harding. It is essentially true of President Coolidge. We have come, therefore, to look to

the White House for more and more of that information which is necessary to us, if there is to be an intelligent understanding of the measures upon which we must comment.

To facilitate this, there has grown up a system of press conferences with the President. They were initiated, in a small way, by Roosevelt. He adopted the plan of calling in certain of the correspondents when he had anything important to impart to them, and once in a while, as, for instance, when he launched his first conservation congress, he called in the entire corps. President Taft went farther. Before entering the White House he had been secretary of war and had found much profit and some enjoyment in his press conferences in the War Department. He arranged to meet us in a body once a week. Mr. Wilsom, when he first went to Washington, increased the conferences to two a week. When the World War came on, however, he found it desirable to abandon the conferences altogether, and they were never renewed by him. President Harding revived them on the basis of two a week, and President Coolidge has kept them going.

Until the middle of the Harding term, these semi-weekly sessions at the Executive Offices were free and easy. They were attended by all the accredited correspondents who cared to be present and by certain visiting editors or foreign journalists who went as our guests. Questions were propounded without any restraint whatever and were answered or not by the President, as he felt inclined. This cross-fire between the head of our government and representatives of the press was a matter of particular interest and some astonishment to foreign newspaper men, —men, I might add, who would never have dreamed of directly catechising so important an official of their own governments.

Then came the Harding slip in connection with the Disarmament Conference, when he mistakenly answered a question as to the application of one of the treaties to the mainland of Japan. This greatly embarrassed him; it embarrassed the Disarmament Conference; and, as will be recalled, the President felt impelled to issue a formal statement retracting what he had said. This incident caused a complete change in the intercourse of the press with the President. Instead of submitting verbal questions to the Executive, some of them premeditated, others propounded on the spur of the moment, we were told that all queries must be submitted in writing and should be in the President's hands fifteen minutes before the conference. This was to enable him to ponder his replies and to decide in advance what questions he should answer and what ones he should ignore.

The conferences have never been the same since. The correspondent has been placed at a disadvantage, in that his written question may be passed over by the President, without any one but the questioner and the questioned knowing about it. In other words, the proceeding is largely *ex parte*, so to speak, and to that extent decidedly unsatisfactory to many of us. Mr. Coolidge has hedged his conferences about, moreover, with other restrictions, for which he has been widely criticized. He declines to permit us to quote a question which he has failed or refused to answer. We may not even refer to such a question. Indeed, he does not relish the quotation of a question responded to.

From the beginning it has been a rule of presidents that they must not be quoted directly by the press, in answer to inquiries or otherwise, unless specific authority is given. I stand for that rule fully and sympathetically, even though in doing so I find myself in conflict with many of my colleagues. These colleagues believe that the President should be willing to assume full responsibility for whatever he says that is intended for publication, and not unload all of the responsibility on the press. Many of my associates go even farther and insist that if the President is not willing to be quoted after his press conferences, the conferences become farcical and should be abolished. They add that as matters now stand the President gains the benefit of inspired publicity, but puts himself in a position to repudiate, with or without qualm, anything that may be printed which embarrasses him or looks different to him in print from what he expected.

With at least two of these views, I heartily disagree. In the first place, as I have already indicated, I do not think it incumbent upon the President to stand sponsor for a quotation or a series of quotations after he has replied to questions submitted to him by the press. I do not believe that he could afford to do this. If twice a week he were quoted on every conceivable matter brought to him by us, from the location of bathing-beaches in the District of Columbia to the disarmament discussions at Geneva, he would become, in the eyes of the country and of the world, a mere presidential babbler. He would be a laughing-stock in every foreign capital and in most of the editorial offices at home. He must protect his dignity and prestige against that kind of thing, and in order to do it he must maintain his rule against direct quotation.

Mr. Coolidge has gone so far in this direction as to kill the convenient "White House Spokesman." That fictitious character was set up by many of the newspaper men in Washington and was quoted system-

atically by them when actually they were quoting the President. Mr. Coolidge several months ago took exception to this, and while I cannot reveal how it came about without violating a confidence of the White House press conference, it is no secret that the Spokesman is now dead and will probably never be resurrected.

How are the Washington correspondents to impart authority to presidential news, therefore, one may ask, when the President may not be quoted, nor even a White House Spokesman? Are we, as correspondents, to assume all responsibility for what Mr. Coolidge, for instance, may say, and divide none of that responsibility with the source of our news? Not at all. For my part, I have found plenty of devices which serve me when I want to charge a given piece of information to the White House, not one of which, thus far, has been demurred to by the President. I can say, as I have said scores of times, that "the White House today announced," etc., etc; or that "it can be stated with White House approval"; or that the "President authorized." These phrases have appeared over and over in every American newspaper, and will continue to appear; and I can give the assurance that in every instance they are used to carry views or announcements made directly to the corps of correspondents by the President of the United States himself.

Nor do I, for one, argue that, in any event, the press conferences at the White House should be abandoned. They serve a highly useful purpose. They are distinctly to my advantage as a working journalist at the capital, by giving me twice a week a slant upon the President's mind. I am able to sense some of his mental processes and to acquaint myself with his attitudes. This is helpful to me in interpreting Administration policies, even if it does not always give me concrete themes upon which to write. I may go to five or six of these conferences and come away without a scrap of what we call "spot" news. But at least I have some intimate close-up of what the President is thinking or the lines he may eventually take on a given policy. All this, moreover, is of value to our readers; and, after all, our readers are our clients—our actual bosses. It is our obligation and our business to give them at all times the best information regarding all subjects upon which they are entitled to enlightenment. The White House press conferences, restricted though they are, work measurably to that end.

On the score of inspired publicity—presidential propaganda—there is something that should be said. It is a favorite charge of editors who are frankly hostile to the man in the White House that the Executive abuses the opportunity his press conferences give him by feeding

to the country only that line of information or of opinion most advantageous to himself. In a large sense this is true. Presidents do seize these opportunities. They do use them for all they are worth. By means of them, they undertake to strengthen themselves politically, or to make their policies more appealing. It is the human thing for them to do, and no President with whom I have had contact as a journalist, whether Democrat or Republican, has been above this practice.

The President is, of course, exceptionally circumstanced to carry on this sort of campaigning. Whatever he says or whatever he does, no matter how trivial, is looked upon by most newspaper men as news. His commonplaces and his platitudes get space which no other person could hope for. The men assigned by their papers to report his activities naturally write whatever proceeds from him that might remotely interest the public. And the editors print it day after day, even though many of them inwardly revolt at it.

But it is by no means true that the Washington correspondents lend themselves, consciously or unconsciously, day after day to presidential designs in the matter of favorable publicity. It is our duty to know when we are being imposed upon by a seeker of inspired propaganda, whether he be a President, a Congressman, or an Anti-Saloon Leaguer. If we do not know it, we are unworthy to represent our papers in Washington. We ought to be sent back to the journalistic kindergarten for a little primary training in reporting. And any one of us who cannot conscientiously abide by the rules of a presidential press conference has the right to withdraw. The rules are admittedly one-sided. They are made by the man who runs the show. They handicap the rest of us. But we do not have to accept them. We can remain outside; and it is a fact with which the country at large may not be acquainted that more than one of my associates does remain outside, in order to exercise a greater freedom in what he writes.

Although it is true that the relations between the press and the federal government are on a more satisfactory basis at the present time than ever before, with each side freely recognizing the rights of the other, it is by no means true that we live in a state of undisturbed brotherly love. Clashes are inevitable. Public men continue to resent many of the things that we feel bound to print about them. Efforts are still made to restrain us or to divert us, and occasionally to draw and quarter us. Presidents occasionally bar an individual journalist from the White House and the executive departments as punishment for some real or fancied offense. Legislators chastise us once in a while.

from the floor of the House or Senate. But these things are not serious and merely reassure our editors and our readers of our independence.

Legislators complain bitterly in season and out that the men who report Congressional activities for the American newspapers pay vastly more attention to the trivial things that come to the reporters' notice than to the constructive achievements of the House and Senate; that a bit of political intrigue may be played for a column in the papers while a stroke of statesmanship is dismissed with a paragraph; and that if Congress is in disrepute before the country, it is because of the perversity of those who occupy the press galleries rather than the malpractices of those who occupy the floor. The alibi, however,—if I may call it that—does not hold. If there were more serious statesmanship in Congressional life, more would be written about it. It would be welcomed by us with enthusiasm. It would be generously advertised on the first pages. If there were less charlatanism in the House and Senate, the two bodies would be regarded less flippantly by those whose patriotic and professional duty it is faithfully to reflect and appraise the activities of the men who make legislative history.

Let me add that if the Congress of the United States has fallen low in public esteem—and who can doubt it?—if there is a lack of confidence in its collective wisdom, and if its passionate patriotism commands only a measure of popular respect, this state of mind is to be charged not so much to the high crimes of that body as to its misdemeanors; not so much to its transcendental failures as to its minor follies, its montebankery, its moral cowardice. Senators and Congressmen alike invite public reproach, session after session, for example, for the deliberate falsification of the official record of Congressional proceedings; for the shameless increase in their pay through the excessive mileage which they allow themselves; for further raids upon the Treasury by the employment of wives, sons, and daughters; for the seed graft, which was practiced for many years; for the endless junketing at public expense; and for the logrolling methods of transacting public business whereby pork appropriations are systematically parcelled out. On the score of personal integrity, on the other hand,—and there is reassurance in the fact—Congress challenges comparison with any average body of citizens, notwithstanding the temptations which daily beset the national legislators. Bribery, for instance, is so rare and so perilous that in the past fifteen years exactly one member has been found guilty of selling his vote for money.

J. FREDERICK ESSARY.

*Washington, D. C.*

## NOTES ON ADMINISTRATION

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### **National, State, and Local Coöperation in Food and Drug Control.**

When President Coolidge authorized the appointment of state and local government officials to coöperate with national officers in the enforcement of prohibition, he had a large body of veteran enforcement personnel from which to select his potential coöperators. For all of the American states and several of the cities had long maintained some agency for the enforcement of pure food and drug laws or kindred statutes aiming to protect the public against intrastate traffic in misbranded and adulterated commodities. Since 1906 they had worked with the bureau of chemistry of the United States Department of Agriculture in applying the kindred national act to interstate commerce. Then in 1927, the year following President Coolidge's prohibition executive order, there was created a national food, drug, and insecticide administration in the same department. Through its office of coöperation was formed a federated supervision of the production and distribution of foods, each organization acting within its own limited legal jurisdiction: the states inspecting factories and intrastate trade; the cities scrutinizing markets and local deliveries to the consumer's home; and the national government watching over the interstate and foreign shipments.<sup>1</sup>

<sup>1</sup> The jurisdiction of the national and state governments with regard to pure food and drugs legislation has been a subject for judicial consideration. National authority over interstate commerce is comprehensive under Art. 1, Sec. 8, of the Constitution, which empowers Congress "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." But the states exercise supreme authority over manufacturing and intrastate commerce, and they may even supplement Congressional statutes, provided they do not interfere with interstate commerce. In the case of *Weigle v. Curtice Brothers Company*, 248 U. S. 285, 288 (1919), the Court held that "the fact that a food or drug might be condemned by Congress if it passed from state to state, does not carry an immunity of foods or drugs, making the same passage, that it does not condemn. . . . When objects of commerce get within the sphere of state legislation the state may exercise its independent judgment and prohibit what Congress did not see fit to forbid." Other discussions are presented in *Savage v. Jones*, state chemist of Indiana, 225 U. S. 501 (1912); *McDermott v. State of Wisconsin*, 228 U. S. 115 (1913); *Corn Products Refining Company v. Eddy et*

*General Survey.* Many of the statutes which the states enforce apply to subjects sufficiently various to warrant dual or triple classifications. Prohibitions of the sale of very young veal, for instance, might be classed as dietary or as humane restrictions. Sanitation in slaughterhouses located in thickly populated residential districts might be required as a means of insuring wholesome meats for the protection of local community health, or as a means of preventing the depreciation of adjacent real estate. Many acts touch feeding stuffs for cattle; also beverages, oils, gasoline, chemicals, and even fertilizers. Weights and measures of products in trade are included in some provisions.

Agencies have been created in some of the commonwealths for the special purpose of enforcing food and drugs acts, while others are charged with several duties; some are composed of one person, others of a staff; some are quasi-independent units, others are attached to a major executive department, usually the state board of health or the department of agriculture where chemical laboratories are available. Collectively, therefore, they include a variety of technical appellations: the Connecticut dairy and food commissioner; the North Carolina state food and oil chemist; the Tennessee division of foods, fertilizers, and dairies in the department of agriculture; the Idaho department of public welfare; the Nevada food and drug commissioner in the public service department of the University of Nevada; the California bureau of foods and drugs under the state board of health. In some states the duties are distributed over two or more separate agencies such as the New York dairy and food bureau in the department of farms and markets, and the state board of pharmacy; the Kentucky bureau of foods, drugs, and hotels under the state board of health at Louisville, and the department of feeding stuffs of the agricultural experiment station at Lexington; the Michigan bureau of foods and standards, and the board of dairying in the department of agriculture, and the director of drugs and drug stores under the state board of pharmacy.

Early food and drugs laws seem to have evolved as applications of expanding police powers and as necessary factors in public health administration. They lend themselves to such wide interpretations, and the principles of their relations to public health administration begin so near the primordial, that caution counsels reservation in assign-

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al., 249 U. S. 427 (1919); State of Minnesota on the relation of Whipple v. Martinson, 256 U. S. 41 (1921); and Lynch v. Tilden Produce Company, 265 U. S. 315 (1924).



ing any exact dates for their sporadic origins. According to Dr. Alexander Wynter Blyth, who essayed the history of food adulteration, ancient regulations were comprehensive.<sup>2</sup> He recalls that Pliny alludes to the fraudulent practices of bakers in adulterating bread with white earth obtained from a hill near ancient Naples. In Athens a special inspector was required to detect and suppress the adulteration of wine. "In Europe generally, from the eleventh century onwards, the bakers, the brewers, the 'pepperers,' and the vintners were most frequently accused of corrupt practices." Mediaeval Germany was particularly severe in its punishment of persons guilty of adulterating foods, wines, and drugs. In 1276 the guilds at Augsburg expelled a false butcher. In Nuremberg nearly all food and drugs products were regularly inspected by such functionaries as the *Schau*, the *Bäckerschau*, and the *Safranschau*. A statute of Paris in 1292 prohibited the adulteration of beer; and an *ordonnance* of the provost in 1382 applied to the adulteration of flour. In England, during the fourth year of the reign of King John, the sale of bread was regulated by the Assize of Bread of 1203, which remained in force until 1286. While this did not directly regulate the adulteration of bread, it indirectly led to the Assize of 1582 which provided punishment for them "that by false meanes useth to sell meale," and for "bouchers that sell mesell pork or mozen flesche," and stipulated that "thus ought other transgressors to be punished, as cooks, forestallers, regrators of the markets when the cookes serve, roste, bake, or any otherwyse dresse, fysche or flesche unwholesome for man's body."

The difficulty in tracing the American beginnings of pure food and drugs regulation is not obviated by recalling the old common law rule which construed the offering of food for sale to imply a guarantee that the food was pure. Defining the terms liberally, however, it is certain that some form of food and drug legislation had been enacted in every state and territory prior to the enactment of the national food and drugs act of June 30, 1906, which was intended to prevent "the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors" in the territories, and at least to regulate traffic in them in interstate

<sup>2</sup> *Foods; Their Composition and Analysis* (London 1882), pp. 4-16. Cf. W. A. Brend, *Health and the State* (1917); K. R. Greenfield, *Sumptuary Law in Nuremberg* (1918); F. E. Baldwin, *Sumptuary Legislation and Personal Regulation in England* (1926); and G. A. Weber, *The Food, Drug, and Insecticide Administration* (1928).

commerce, the statute being more comprehensive than the national act of June 26, 1848, which was designed merely "to prevent the importation of adulterated and spurious drugs and medicines."<sup>3</sup> Twenty-one states modified their statutes during the first year of the 1906 national act.<sup>4</sup> In 1909 appeared the *American Pure Food and Drug Journal*, "devoted to the enforcement of the national and state pure food and drug laws." General regulatory development in the states at large continued after the World War.

*Legislative and Administrative Developments.* While Florida enacted a packing law as early as 1832, the first bona fide state pure food and drugs act *per se* seems to have been the Virginia statute of 1847, which decreed imprisonment and fine for "any free person who shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer," or "who shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such manner as to render the same injurious to health." Another clause applied to "any substance intended for food, or any wine, spirits, malt liquor, or other liquor intended for drinking."<sup>5</sup> Both drugs and liquor were to be "forfeited and destroyed," as under the national act of 1906. Virginia's example was followed, in a measure, by Wisconsin in 1849, Iowa in 1851, Ohio in 1853, New Mexico in 1854, Rhode Island in 1857, Pennsylvania in 1860, and New Jersey in 1865.<sup>6</sup>

<sup>3</sup> 34 Stat. L., 768; 9 Stat. L., 237.

<sup>4</sup> They were: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Iowa, Illinois, Indiana, Kansas, Missouri, New Hampshire, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin.

<sup>5</sup> Acts of the General Assembly (1847-48), p. 112.

<sup>6</sup> The following dates of pure food and drugs acts in the several states may not be entirely exhaustive, but their chronological arrangement will indicate the gradual development of such legislation in each commonwealth and in the country at large:

Florida, 1832 (packing law), 1889, 1907, '11, '13;

Virginia, 1847, 1889-90, '91, '93-'94, '97, 1908;

West Virginia (1847), 1882, '85, '91, 1907;

Wisconsin, 1849, '58, '87, '89, '91, '93, '95, '97, '98, '99, 1903, '05, '07, '09, '11, '13, '21;

Iowa, 1851, '80, '86, '88, '97, 1907, '11, '13, '15, '19, '23 (inspection of eating places);

Ohio, 1853 (labeling of poisons), 1865 (wines), 1882, '84, '85, '86, '87, '89, '90, '91, '94, '96, 1919;

New Mexico, 1854, '65, '89;

That the states should precede the national government in thus applying its police power was apparently as logical as is the residuum of that power in the states. That the Congress should assist the states beyond their jurisdictions was as inevitable as is the necessity of a

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Rhode Island, 1857, '96, 1908, '09, '15, '16, '17, '18, '19;  
 Pennsylvania, 1860, '78, '85, '87, '91, '93, '95, '97, '99, 1901, '03, '07, '17, '23;  
 New Jersey, 1865, '81, '82, '83, '85, '86, '87, '95, '96, '99, 1901, '07;  
 Kentucky, 1868, '70, '93, '98, 1900, '18;  
 Wyoming, 1869, 1905, '11, '13, '15, '20, '21;  
 Michigan, 1871, '73, '75, '81, '87, '89, '93, '95, '97, '99, 1903, '05, '09, '11, '15, '23;  
 Alaska, 1900 (code);  
 Illinois, 1874, '77, '79, '81, '83, '85, '87, '89, '97, '99, 1901, '07, '15, '17, '19, '21;  
 Kansas, 1874, '85, '89, '91, '97, 1901, '07, '09, '13;  
 Utah, 1876, '88, '96, '99, 1903, '07, '13, '19;  
 Louisiana, 1880, '82, '86, '98, 1906, 1914;  
 Mississippi, 1880, 1910, '18;  
 Minnesota, 1881, '86, '87, '91, '95, '97, '99, 1901, '05, '13, '21;  
 Massachusetts, 1882, '85, '86, '87, '89, '91, '94, '96, 1914, '17, '19, '21 (regulation of manufacture of non-alcoholic beverages);  
 Idaho, 1887, '99, 1905, '11, '17, 1921;  
 Indiana, 1883, '89, '94, '99, 1901, '07;  
 Maine, 1883, '89, '95, '11, '13, '19, '23;  
 Nebraska, 1883, '91, '95, '97, '99, 1913, '15, '19, '21;  
 Arkansas, 1885, '91, '93, 1907;  
 Missouri, 1885, '89, '91, '97, 1907;  
 North Dakota, 1885, '95, '97, '99, '23;  
 South Carolina, 1885, '96, '98, 1907, '22;  
 Colorado, 1887, '93, '95, 1907, '15, '18, '21;  
 Maryland, 1888, '90, 1900, '10;  
 Connecticut, 1889, '93, '95, 1907, '15, '18, '21;  
 Oregon, 1889, '93, '99, 1915, '17, '19, '23;  
 Georgia, 1890, '91, '95, '96, 1906, '13;  
 Oklahoma, 1890, '93, 1909, '15;  
 Nevada, 1891, 1913, '16 (hotel inspection law), '21;  
 New Hampshire, 1891, '95, '99, 1901, '07;  
 Washington, 1891, '97, '99, 1901, '05, '07, '17, '21, '23;  
 California, 1893, '95, '97, 1900-01, '05, '07, '09;  
 New York, 1893, '94, '98, 1900, '19, '10, '23;  
 Alabama, 1894-95, '96-97, 1909, '19, '20;  
 Vermont, 1894, 1904, '08, '12, '17;  
 Delaware, 1895, '99, 1907, '21, '22;  
 Montana, 1895, 1901, '11, '19, '25 (regulation of ice cream and cheese factories and adoption of the Babcock test);  
 North Carolina, 1895, '99, 1905, '07, '09, '13, '15;  
 Tennessee, 1895, '97, 1907, '09, '11, '13;  
 South Dakota, 1897, '99, 1909, '13, '15, '17, '23;

federalized police power. But the causes for the development of these particular federalized institutions were numerous. A general factor was the gradual concentration of the population and the consequent complexity of economic life which placed the individual at the mercy of society and of its trade. As Governor Hooper of Tennessee reminded the legislature of 1915, "In the olden days, when every family produced its own foods and compounded its own homely medical remedies, a man could feel a great degree of complacent assurance as to what was entering his stomach. Under modern conditions, a majority of the people must trust for the wholesomeness of their foods and medicines altogether to the honesty and capability of men they have never seen. It is perfectly evident that the strictest regulation and supervision will be continuously necessary to prevent dishonest and inefficient men from destroying the lives and health of the human race by deleterious drugs and foods." More specifically, the reasons for this state regulation included: the increased number of eating-places managed by unscrupulous persons; the development of meat-packing and cold-storage customs; the anti-narcotic laws; state-wide prohibition of intoxicating liquors by state agencies in thirty-three states and the subsequent investigation of non-alcoholic beverages; the increased consumption of confections and of dairy products consequent upon the prohibition of liquor; the multiplied uses of oils and gasolines for

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Texas, 1897, '99, 1907, '09, '11 (food and drug commissioner charged with enforcement of anti-narcotic law);

Hawaii, 1898;

Arizona, 1901, '12, '18.

Elaborate details pertaining to food and drug legislation in the states and in foreign countries prior to 1901 is presented in Senate Report No. 3, 57 Cong., 1 Sess., 1902. Tabulated data pertaining to adulterated commodities and investigators' reports are exhibited in Hearings before the House Committee on Interstate and Foreign Commerce, 57 Cong., 1 Sess., 1902. Later volumes of legal data include W. C. Breed, *Digest of State Laws* (1907), and Breed, Abbott, and Morgan, *Digest of National and State Food Laws* (1916). J. Westervelt, *American Pure Food and Drug Laws*, contains administrative rules and regulations and voluminous citations of decisions. C. W. Dunn's pure food and drug legal manual includes food standards and inspection decisions. J. S. Abbott and W. C. Burnet, *Manual of Procedure for the Guidance of City and State Health, Food, and Drug Officials*, is of technical value. The 1924 compilation of federal and state acts pertaining to this subject includes Canadian laws. W. Robertson and M. Herzog, *Meat and Food Inspection*, presents extracts of English acts. An excellent general treatise, W. W. Thornton, *The Law of Pure Food and Drugs*, is rich in footnote citations of state court decisions.

domestic purposes as well as for automobiles; the enforcement of laws dealing with weights and measures; the results of experiments in household chemistry at the state agricultural experiment stations and the popularization of the findings through college extension courses; multiplied shipments of perishable products; the increased interest in the food problem during the World War with the advent of food administration organizations; and the expansion of international trade in food products after the World War.

The national control of commodities in interstate and foreign commerce naturally was related to that of the states in intrastate commerce, especially after the United States bureau of chemistry established laboratories in sixteen cities throughout the New England, Central Atlantic, and South Central states. Just as the first decade of the national act of 1906 was marked by significant improvements in state administrative machinery for the enforcement of local pure food and drug laws, so the second decade was distinguished by developments, especially in Michigan, North Dakota, and other western states. For example, the Michigan legislature of 1917 created the office of food and drug commissioner and transferred to it the powers of the former office of dairy and food commissioner. It was stipulated that the commissioner should be a citizen of Michigan, appointed by the governor by and with the advice and consent of the senate for a term of four years unless sooner removed by the governor. His annual salary was fixed at \$3,500 and his bond at \$10,000. Some variation from this plan was adopted by the North Dakota legislature of 1923, when it created the office of state food commissioner and chemist, and stipulated that its directing head should be appointed, not by the governor, but by the governing body of the North Dakota Agricultural College, which was the state board of administration. Subject to removal for cause by this appointing power, and without appeal from its action, he was to serve for a two-year term at a salary of \$4,000 a year and under a \$10,000 bond which was rendered payable out of the state regulatory fund. Staffs of assistants were provided for these two commissioners and were placed largely under their centralized control. Michigan permitted the commissioner to appoint, subject to the approval of the governor, a deputy, an analyst, some inspectors and investigators, and authorized the coordinated aid of the attorney-general and all of the prosecuting attorneys, sheriffs, and police officers. North Dakota authorized its commissioner to make similar appointments with the approval of the state board of administration, and to

provide laboratories and other facilities necessary for the enforcement of the laws.

The Michigan commissioner was required to supervise the enforcement of all the state statutes relating to weights and measures as well as to traffic in foods, drugs, and liquors. Powers to execute these duties were plenary, including those of a sheriff in making arrests. The North Dakota commissioner was charged with the enforcement of laws treating of almost as many subjects as would be represented in a compilation of all of the kindred laws in all of the states: foods, drugs, soda fountains, beverages, feeding stuffs, insecticides and fungicides, fertilizers, snuff, oils, paints, varnish, false and misleading advertisements, net weights, cold storage, sanitary inspection, and hotel inspection. He was empowered to gather information concerning articles, and to publish the analyses of products in much the same manner as were the results of agricultural experiments at the state experiment station. His administrative discretion extended to minute details of procedure. Both he and his agents were granted access to all places of business, whether factories, cars, or vessels. They were authorized to open packages, to prevent the manufacture or sale of goods when necessary to enforce the act, and to require a medical examination and certificate of health for workmen suspected of having communicable diseases. North Dakota municipalities were empowered to enact pure food and drug ordinances.

Compulsory sanitation in the production and distribution of food, which had made rapid progress since 1906 in such states as Iowa, Indiana, and Nebraska, continued to develop during the second decade of the national act. South Dakota emphasized its importance in 1921 by creating a sanitary inspector and by declaring that unclean surroundings of food businesses should constitute a nuisance. During the same year, Wyoming authorized its dairy, food, and oil commissioner to close any unsanitary place that was used for manufacture or traffic in foods. This was to be done whenever it seemed desirable to him or his agents, and without even a formal warrant. Likewise, the Oregon dairy and food commissioner was empowered in 1923 to seize milk and ice cream containers when they were not properly sterilized after being used for other substances.

*Administrative Legislation.* Administrative powers so extensive required a corresponding amount of ordinance power in the form of both subordinate legislation and subordinate adjudication—power to issue orders and regulations, to grant hearings, and to render ex parte

decisions. By 1916 administrators of nearly every state had ordinance power sufficient to issue rules and regulations pertaining to foods and drugs, and the constitutional question as to whether they had come by this authority through a delegation of the legislative power had been answered negatively in numerous court decisions. Legislative attitude toward the question is illustrated by the North Dakota act of 1923, which required the commissioner to complement the statutes with such detailed provisions as should be necessary "to fix, adopt, publish and enforce definitions, rules, regulations and standards of quality, purity, and strength of articles of food and drugs for which no definition" is prescribed by law. This power promised to expand with the increase in chemical discoveries. The World War had already rendered inevitable some modification of the United States *Pharmacopæia* which had appeared in 1916 for the first time since the national act of 1906. Again, the Wisconsin commissioner was given the ordinance power in 1922 to declare that a "license to operate a cold storage warehouse will be granted by the dairy and food commissioner for a period of one year only, after an examination of the warehouse has been made and it has been found to be in a proper sanitary condition and otherwise properly equipped for its intended use. No person having any communicable or contagious disease shall be employed in any capacity in a cold storage warehouse." In 1924 the Indiana state board of health adopted rules to govern the manufacture and dispensation of soft drinks on fair grounds, in parks, and on highways.

*Administrative Adjudication.* By 1916 administrative adjudication of food and drugs cases was well developed in every commonwealth. Hearings before enforcement officers had been authorized in the majority of the states, but the statutes of eighteen states lacked specific provision for them.<sup>7</sup> The legislatures in these latter cases probably presumed that the hearings were unnecessary because unwholesome food not only may be destroyed by the state or municipal authorities, but it may be destroyed, if the statute or ordinance so provides, "without notice or hearing given to the owner."<sup>8</sup> The case of *Deems v. Baltimore* held, however, that "to justify such interference with private rights, the exercise must have for its immediate object the preservation of the public good, and, so far as may be practicable,

<sup>7</sup> They were: Idaho, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, South Carolina, Texas, Utah, Vermont, West Virginia, and Wisconsin.

<sup>8</sup> W. W. Thornton, *The Law of Pure Food and Drugs*, p. 88.

every effort should be made to adjust the conflicting rights of the public and the private rights of individuals,"<sup>9</sup> so as not to violate the Fourteenth Amendment to the national Constitution. Accordingly, the South Dakota act of 1915 specified that when a person was charged with violating the food and drugs acts, and ordered to respond to the charge, he should "have the right to appear in person or by attorney before the state food and drug commissioner or the person appointed by him for such purpose within the time specified in the order, and shall be given an opportunity to be heard and show cause why such order or instructions should not be obeyed. Such hearings shall be under such rules and regulations as may be prescribed by the state food and drug commissioner. If after such hearing it shall appear that the provisions of this act have not been violated, said order shall be rescinded."

*Administrative Activities.* The food and drug agencies in some commonwealths apparently became sufficiently manned to enforce the laws without auxiliary aid, but most of them continued to coöperate with allied services of the state, with the local governments, with neighboring states, or with the United States bureau of chemistry. In Pennsylvania, Governor John K. Tener advised the 1915 legislature that the "Pennsylvania pure food laws are probably the best in this country. They are enforced vigorously and efficiently. It is the duty of a state to see to it that measures are enacted for securing and maintaining a pure and wholesome food supply, to facilitate its distribution, to safeguard its quality, and to prohibit absolutely any and every adulteration of food and drink." Reports of commissioners in other states have indicated the gradual development of strong state agencies which have been able not only to secure arrests but to procure sufficient evidence against accused persons to insure their conviction. In 1898 the Michigan commission developed 53 cases, but procured only 8 convictions. Five years later they again had 53 cases and procured 32 convictions; but twenty years later they convicted one hundred per cent of their cases. Most of these cases were for violation of the dairy laws—the selling of adulterated milk and the like. The latter cases were instituted by the inspector of the agricultural department, and they do not include the cases handled by the county and city milk inspectors.<sup>10</sup> The Minnesota agency in 1922

<sup>9</sup> 80 Maryland 164, cited in *ibid.*

<sup>10</sup> Annual Report of the Michigan Bureau of Dairying (1923), p. 31.



visited, at least once, all of the towns in the state having a population of 200 inhabitants. Altogether, 878 towns were visited, 279 mills were inspected, as were 1,865 stores and warehouses. Much feed was removed from sale.<sup>11</sup> During the first twelve years of the Oregon commission, 17,882 specimens were examined and analyzed. Food laboratories were established in the Oregon Agricultural College and in Portland, making possible the examination of more than four thousand samples in one year. In 1923 they gave great attention to narcotics and beverages, examining 320 samples of the former and twice as many of the latter, as well as 61 specimens of ice cream. Their inspection of dairies, grocery stores, confectioneries, soda fountains, slaughter houses, and meat markets totalled 9,803 and was followed by 495 prosecutions and \$9,450 in fines. The name of each prosecuted delinquent was published in the annual report.<sup>12</sup>

Coöperation with allied officers of the state is illustrated in the Montana revised code of 1921; which provides that the report of the chemist at the state agricultural college condemning food "shall be taken as presumptive evidence of the impurity of such drug or article of food." The state police are regarded as food law enforcement officers, especially in New Jersey.

*Coöperation with County and Municipal Governments.* In the enforcement of pure food and drug laws coöperation with county and city governments was practiced widely after Congress passed the Smith-Lever Coöperative Agricultural Extension Act of May 8, 1914,<sup>13</sup> providing for agricultural agents and home economics demonstrators in all counties complying with the terms of the law. Home demonstrators were later provided for urban communities as well as rural, under the federated supervision of the national, state, and county governments. While these officers were not directly connected with the enforcement of the food and drugs acts, they advanced the same purpose. It was the duty of the county agents to instruct the farmers concerning the purity of fertilizers, the sanitation of fruit packing, and the uses of dairy products. Likewise, the home demonstration agents taught the chemistry of foods and the domestic sciences in general. Furthermore, some of the state food and drugs officers resorted to the methods of

<sup>11</sup> Fourth Annual Report of the Division of Feed Inspection, Minnesota State Dairy and Food Commission (1922), p. 31.

<sup>12</sup> Fourteenth Biennial Report of the Dairy and Food Commission of the State of Oregon (1923).

<sup>13</sup> 38 Stat. L., 372.

the extension agents in protecting the public against bad commodities. The need of such coöperation has been stressed by both state and national administrators. Governor Dunne of Illinois informed the 1915 legislature that "with only eighteen inspectors to cover the entire state, it is obvious that this department can accomplish its purpose only with intelligent coöperation from municipal and county officers and from the general public. . . ." Realizing this, the state food commissioner has devoted particular attention to enlisting the assistance of local officers, obtaining the enactment of municipal ordinances for the protection of the food and milk supply of cities, and to a campaign of lectures and newspaper publicity for the purpose of instructing the public in the provisions of the law and methods of insuring its enforcement. Moving picture exhibitions have been used with good results, and the volunteer assistance of newspapers throughout the state has been of great value in this campaign."

Coördination of state and local enforcement activities may easily be resolved to problems of personnel administration. This was emphasized at the convention of the Association of American Dairy, Food, and Drug Officials in 1918, when it was declared that "real coördinated effort can be accomplished only by eliminating politics in the appointment of inspectors, as efficiency is out of the question so long as a change of administration affects the positions of the workers. Civil service rules should be strictly enforced in selecting inspectors, and if any political pressure is brought to bear upon the appointment of a person to any official position in the inspection service, such a person should be barred from holding office, regardless of his qualifications."<sup>14</sup> This is especially true where local food dealers are heavy contributors to political campaign funds, but certain city managers might prefer a greater centralization of administrative responsibility to municipal civil service systems.

Nevertheless there has been reasonable cause for optimism. The Missouri commissioner appealed to the citizens of the state in 1922 for coöperation in his work. Prosecuting attorneys and sheriffs especially are desired to coöperate with the enforcement organization in some states, and the Michigan commissioner reported in 1923 that this coöperation had been excellent in his state. One of the best examples of state and local government coöperation is afforded by Oregon. In 1923 the commissioner reported that "in order to secure

<sup>14</sup> Official Proceedings of the Twenty-Second Annual Convention of the Association of American Dairy, Food, and Drug Officials (1918), p. 165.

closer coöperation of local authorities this department has, with good results, recommended to several cities the passage of an ordinance regulating the local milk supply. A model ordinance was prepared by this department and through our deputies presented to the council in a number of towns, seven of which, with minor changes to suit local conditions, have adopted it. Almost without exception, where our deputies have been able to meet with the city council and explain the object of the proposed ordinance and its practical workings they have accepted and passed it. This work has brought these towns and cities into closer touch with, and greater appreciation of, the work of this department and has established closer coöperation that is mutually beneficial. In most cases a local inspector is appointed who is in a position to make an inspection any day at a moment's notice. This continuous overshadowing presence of an official has a very salutary effect upon the dairyman who might otherwise have a tendency to be a little slack in his methods."<sup>14</sup> The Oregon commissioner announced in 1923 that "while milk and cream constitute the larger portion of these specimens, they include every kind of food products as well as a wide range of other specimens. Among these, alcoholic liquors and narcotics are quite conspicuous. These have been analyzed by our chemist in coöperation with city, state, and federal officials in the enforcement of the prohibition and the Harrison anti-narcotic laws, it being the policy of the office to render state-wide service as far as practicable."

In 1923 a survey of municipal health department practice in eighty-three cities was completed under the auspices of the American Public Health Association, in coöperation with the United States public health service. Municipal food and drugs inspectors received thorough scrutiny by Professor Ira V. Hiscock, who concluded that: "1. Food inspection is an essential function of the municipal health department and is universally accepted as such. As a rule, the work is under the direction of a full-time official (52 out of 65 cities) or of the health officer himself (4 cities) and is frequently combined with the supervision of the milk supply (35 cities). 2. The staff consists of veterinarians and inspectors, about one veterinarian per 50,000 population and about two inspectors per 100,000 population. About one-third of the former and one-sixth of the latter are on part time. 3. The cost of food inspections in 33 cities averages about 5½ cents per capita.

<sup>14</sup> Biennial Report of the Dairy and Food Commissioner of the State of Oregon (1923), pp. 7-8.

4. Most cities require permits or licences for certain classes of places where food is handled, slaughter houses, markets, bakeries, restaurants, hotels, candy stores, soda fountains, groceries, and fruit stands being most commonly licensed, in the order named. 5. All of the above types of establishments are inspected in 47 cities. About 4,400 inspections of premises per year are made per 100,000 population, the large cities showing a much lower and the small cities a much higher figure. Scoring is practiced in only a quarter to a half of the cities which inspect a given type of premises. About half of the large cities have special regulations for the sterilization of utensils. 6. It is usually found that all slaughter houses not federally inspected are inspected by the health department, but records of carcass inspections are seldom kept. For three cities presenting this information the numbers are from two to seven times as high as for all other food inspections. 7. The number of food handlers in 35 cities averages about 25 per 100,000 population. Thirty-seven out of 81 cities have regulations for the medical examination of food handlers and 22 cities report definite figures for 1920. Of these cities, five made no examinations and two only a small number. In the other 15 cities reporting, 500 examinations were made—on the average, 63 examinations per 100 food handlers. The development of the work in these 15 cities is highly creditable, and other departments would do well to imitate them. 8. Only nine cities exert direct administrative control over the drug problem. This is a line of health department work which should be substantially extended along the lines worked out in New York and Cleveland.”<sup>16</sup>

*Coöperation with the National Government.* Between the states and the national government, coöperation was as inevitable as was that of the states with their municipalities. Obviously it was due to the universality of the problem and to the limited jurisdiction of the states with regard to interstate commerce and of the national government with regard to intrastate business. To insure greater coördination in the work of the national and state enforcement administrators, a central federal organization was proposed at a meeting of state and

<sup>16</sup> Report of the Committee on Municipal Health Department Practice of the American Public Health Association, in *Coöperation with the United States Public Health Service*, U. S. Public Health Bulletin No. 196, pp. 190-191. Cf. Dr. C. V. Chapin, Report on State Public Health Work, made under the direction of the Council on Health and Public Instruction of the American Medical Association (1915). Pp. 80-96 treat of local health administration and the state.

federal food and drug officials in 1913. During the following year—in which the Smith-Lever Coöperative Agricultural Extension Act also was passed—there was created in the bureau of chemistry an office of coöperation, which in 1927 was incorporated in the Food, Drugs, and Insecticide Administration. Furthermore, in 1916, the Association of American Dairy, Food, and Drug Officials resolved “that both state and federal food and drug officials of this Association unite in the formation of smaller associations on a basis of community interests to study ways and means of handling local problems, and that their conferences be entirely of an executive nature.”<sup>17</sup> Subsequently, such organizations were founded by officials in the New England, Central, North Central, Central Atlantic, South Central, Western, and Southeastern states. Director W. S. Frisbie of the Office of Coöperation has said that these sectional organizations were “really instrumental in promoting coöperation and coördination, since by means of these associations has it been possible to secure the adoption over wide sections of the country of uniform regulations for enforcing food and drug laws.”

The general activities of the Office of Coöperation early included the collection of statutes, regulations, definitions, and standards of the several states and foreign countries; publication of a manual of procedure for the guidance of state health, food, and drug officials; publication of lists of federal and state dairy, food, drug, and feeding-stuffs officials, with current revisions; publication of the *Food and Drug Review*, containing “reports for the sole use of federal, state and municipal officials in the regulation of commerce in foods and drugs;”<sup>18</sup> correspondence and conferences with state and municipal officers; notification of the beginning and termination of court decisions and of public hearings of the bureau of chemistry; furnishing of analyses and of inspection reports; presentations of methods of analysis; collection of state administrative reports and publications.

In this way the office keeps in direct contact with fifty departments, including those of the District of Columbia, the Philippines, and the territories of Hawaii and Porto Rico.<sup>19</sup> Consequently, several municipal and state officers secure evidences with which the national act may

<sup>17</sup> Annual Report of Department of Agriculture (1917), p. 207.

<sup>18</sup> Notice is served that “information appearing in the *Food and Drug Review* is confidential. Readers are requested not to make public anything from the *Review* without first obtaining permission from the bureau of chemistry.”

<sup>19</sup> U. S. Department of Agriculture Circular 137 (1924), p. 15.

be more efficiently enforced. "Federal officials, in turn, notify city and state officials of violations of city ordinances and state laws relating to foods and drugs."<sup>20</sup> An example of state aid to national officers is afforded by Minnesota in 1922. The Minnesota state inspectors were "authorized to collect samples from interstate shipments of feeds when considered advisable. When such samples are collected they will be forwarded to the nearest government laboratory for whatever action the federal authorities deem advisable."<sup>21</sup> Also, the Oregon commissioner had occasion to report in 1923 that "agents of the federal department often find it necessary to call upon this office for assistance in prosecuting cases not completely covered by federal law. So the local representative of the federal department and this office have established close relationship and are in constant communication and coöperation. This relationship has proved very satisfactory and mutually beneficial to all parties concerned."<sup>22</sup>

Conversely, the national government has aided the local administrators in some emergencies. One of the most amazing instances was the investigation of poisoning outbreaks in 1924. "Immediately upon the conclusion of the investigation of the bureau of chemistry, which proved that the fatalities in Wyoming had been caused by canned ripe olives, letters were sent to every state official charged with the enforcement of regulatory food laws, and to similar officials in the larger cities, advising them of the results of this investigation and, in view of the great danger to the public, requesting their assistance in surveying immediately, so far as practicable, all stocks of ripe olives in the hands of jobbers, wholesalers, and retail dealers and removing all packages which were in any respect suspicious. Supplementing these letters, the field stations of the bureau of chemistry addressed similar requests to the health officials of many cities, large and small, within their territories. The response to these requests was immediate, and the bureau was very soon receiving samples of olives from every section of the United States. These were examined and reported upon as fast as possible."<sup>23</sup>

<sup>20</sup> Program of Work of the United States Department of Agriculture for the Fiscal Year 1919, p. 315.

<sup>21</sup> Fourth Annual Report of the Division of Feed Inspection, Minnesota State Dairy and Food Commission (1922), p. 31.

<sup>22</sup> Biennial Report of the Dairy and Food Commissioner of the State of Oregon (1923), p. 7.

<sup>23</sup> Annual Report of the Chemist, Department of Agriculture (1924), p. 25.

This system of federated enforcement activity has been quite as satisfactory to the officials of the national government as to those of the states. The bureau of chemistry reported in 1920 that officials of thirty-two states had instituted actions for violations of the federal food and drugs act which resulted in 81 prosecutions and 174 seizures. Municipal officials of five cities instituted 61 prosecutions and 17 seizures during the same period.<sup>24</sup> Two years later he asserted that "very satisfactory reports have been received from the field forces as to the coöperation being received from the various state and city departments, and especially from several states and cities where heretofore coöperation had been relatively undeveloped."<sup>25</sup>

"In spite of all that has been secured," says Director W. S. Frisbie of the Office of Coöperation, "there is still room for improvement; and this improvement will come as a result of greater coördination and simplified administrative procedure." The inspections must keep pace with the newer inventions and food compositions. There is need for greater coöperation of the local governments with each other and with the national Office of Coöperation in the Food, Drug, and Insecticide Administration. Perhaps there might be more coöperation between the educational forces of the Department of Agriculture and the regulatory officers. For instance, it might be that the county agricultural agents and the home demonstration agents of the Extension Service could conduct popular educational campaigns that would result in greater assistance to the Food, Drug and Insecticide Administration from local governments, civic societies, business associations, and individual citizens. And possibly politics could be further eliminated from the state and local enforcement agencies. Uniform state legislation is essential, with a corresponding unification of rules, regulations, standards, and decisions. Expeditious methods for the interstate extradition of criminals are needed. Official statements concerning this growing problem of law enforcement offer no alternatives for its complete solution. Referring to the national act, one federal administrator testified in a Congressional hearing in 1923, that "the enforcement of this law is getting more difficult and more expensive every year. That is naturally to be expected. The conditions with which we are confronted at the present time in its enforcement are quite different from those that obtained originally. The forms of sophistication that exist now are more subtle and more devious than those that were originally en-

<sup>24</sup> Annual Report of the Department of Agriculture (1920), pp. 264-265.

<sup>25</sup> *Ibid.* (1922), p. 276.

countered. The enforcement of the law does not involve the simple mechanical operation of going out and collecting a sample and showing that it had been shipped in interstate commerce and in making a simple examination to prove that the product claimed to be in that package was not that product at all. Proper enforcement now requires thorough study to determine methods which can be employed by the laboratories engaged in the simpler form of work, for the purpose of identifying the type of adulteration that has taken place."<sup>26</sup>

In a previous hearing in 1916, Dr. C. L. Alsberg, chief of the bureau of chemistry, urged unification of both state legislation and administration. He testified that in some instances "two neighboring states had practically identical or very similar laws; yet the administration of these laws in the two states has been so different that they might for all practical purposes have been different laws."

Uniformity of state legislation pertaining to food and drug matters is not a new proposal. In 1899 the National Pure Food and Drug Congress expressed itself upon the subject thus: "All that is desirable and all that can reasonably be expected is that there should be a substantial agreement upon the fundamental principles of food and drug legislation, especially as regards the standards of purity which should be exacted, and upon the methods of labeling the substances which come within the purview of the statutes, in order that manufacturers and producers may not be put to the unnecessary trouble and expense of preparing a different quality of goods or a different form of label for every state into which they may be transported for sale. . . . Since each state must legislate independently, the only hope of securing uniformity lies in persuading the states to legislate in unison. Unison of legislation must be the result of unison of sentiment, and this can be secured only by general and widespread education upon the subject, in order that those who are charged with the enactment of such laws may be familiar with the form of statute best adapted to accomplish its purpose."<sup>27</sup> Two decades later this had been realized perceptibly.

Furthermore, the problem of uniform legislation was made a major study by the Association of Dairy, Food, and Drug Officials in 1921, and by 1927 Director W. S. Frisbie of the Office of Cooperation was able to say that there had been prepared a uniform act which had been passed by the executive committee of the Association and had been

<sup>26</sup> House Hearings on the Agricultural Appropriation Bill for 1924, p. 262.

<sup>27</sup> Report of Proceedings of the Second Annual Convention of the National Pure Food and Drug Congress (1899), pp. 32-33.



given to the members for further study. Without being adopted by the Association as a whole, the essentials of this proposed act had become law in Alabama and North Dakota. In addition, Dr. Frisbie reported that "uniform rules and regulations, that is, general regulations governing food and drug administration, have been adopted in at least three of the sectional associations." Accordingly, uniform state food and drug laws should promise economy and efficiency in the production of commodities and in the administration of the law, and a corresponding reduction in the legitimate retail price to the consumer. The equation of legislation and administration, therefore, might be reduced to the lowest terms of economic and of social science.

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**Evaluating State Administrative Structure—the Fallacy of the Statistical Approach.** Throughout past times, and even today, political science has been embodied chiefly in philosophical treatises consisting of systems of principles reasoned from undemonstrated political postulates. The study of politics has been endowed with but one earmark of science—a descriptive catalogue of schemes of governmental structure, a catalogue that continually demands addenda and revision. Within the past decade, however, certain political scientists have embarked upon an exploratory expedition into the still uncharted waters of political statistics. They hope by the adoption of an objective, statistical approach to governmental problems to make the study of politics truly and completely scientific.

This new movement has interested the writer. Two years ago he was a firm exponent of the use of statistics in political science. If statistics can be employed to analyze the fluctuations of interest rates or the frequency distribution of cancer deaths, why can they not be adapted to an examination of problems that confront the student of political life? At that time the writer began a study of the movement for the reorganization of the administrative branch of state governments. The exponents of this movement claim that consolidation and simplification of state administrative agencies produce well-nigh miraculous results in increased efficiency and economy. Surely, reasoned the writer, there ought to be some objective and statistical method of demonstrating or disproving such a proposition. He, therefore, endeavored to make an objective evaluation of state administrative reorganization. Two years' study of this problem has indicated inherent weaknesses in sta-

tistical approaches to an evaluation of the movement. The lessons as to the shortcomings of statistics in the study of administrative reorganization are applicable to many other branches of public administration.

An evaluative study of the effects of state administrative reorganization centers, in the main, about two questions. Has the new mechanism of administration produced increased economy or efficiency? And has this movement brought better men into public office? Our judgment on administrative reorganization depends upon the answers to these questions. Statistics, if they are at all applicable to such an analysis, must aid us in answering the queries. The various methods of evaluation employed by the writer will be outlined, together with the difficulties encountered in such an effort.

The first attempt to apply statistical methods to the problem of evaluating administrative reorganization was an analysis of the expenditure trends for the several states that have enacted administrative reorganization legislation. It was desired to examine these trends in order to discover whether or not there had occurred any break in tendency upon the inauguration of the new administrative structure. In some cases three immediate obstacles blocked all further study. In the first place, financial statistics were frequently non-existent; in the second place, upon the adoption of administrative consolidation and centralized fiscal supervision the methods of reporting administrative expenditures and activities usually changed; and in the third place, the lack of standardized reporting invalidated any desired comparisons of expenditure trends among the several states. In a few instances these obstacles were surmounted.

The problem, however, was not yet solved. Three irrelevant factors demanded elimination before a study of the changes in trend due to the introduction of the altered administrative structure could be begun: the expansion and contraction of state activities, the increase of government salaries, and the changing value of the dollar for state purchases. These difficulties exist in normal times, but their elimination was made especially difficult by the tangled problems of finance arising out of the World War. The exigencies of war financing caused the states to co-operate with the federal government in postponing all non-essential public improvements. As a consequence, after the armistice the state governments found themselves face to face with the problems of overcrowded hospitals and institutions, insufficient office buildings, and inadequate and worn-out highways. To catch up with their neglected work and to care for the needs of an increasing population, the states

embarked on tremendous building programs. For the five-year period beginning in 1919 we find the same jumps in governmental costs in states with and without the newer techniques of administration. As a consequence of the war and the post-war situations, the attempt to eliminate from the expenditure trends the variable of contraction and expansion of state activities resulted in immediate havoc to the entire analysis. The plan adopted was that of comparison over a period of years of the expenditures for like activities. However, the sharp contraction of state work during the World War and the huge increase in administrative activities after the armistice meant that the elimination from our analysis of all unlike activities left little of importance for comparison.

A second attempt to evaluate the economy and efficiency of administrative reorganization involved the use of index numbers for administrative activities.<sup>1</sup> Index numbers were compiled for the price of administrative activities for the several states; indices of actual expenditures of those states for the same years were placed in comparison. A government that is being operated economically or efficiently should demonstrate lower expenditures in relation to the price indices than a similar government operated less economically or efficiently. In this test, as in the first, we encounter the obstacles of the lack of adequate financial data and of the changing methods of reporting state expenditures and activities. In addition, serious questions can be raised as to the validity of much of the material that goes into the construction of the index numbers. A large share of the states' expenditures is consumed by salaries for the states' personnel. The problem of establishing an index number for governmental salaries based on what similar workers would be paid by private business is fraught with serious difficulties when we realize that in many cases no comparable groups of workers and administrators exist outside of the government service.

The exponents of administrative consolidation maintain that their proposal reduces the amount of overhead in administration. The writer consequently attempted to verify this contention. This problem can in a measure be studied by an examination of the ratios between the total amount expended by a state on any given function, as charities and corrections or highways, and the amount spent on supervising that activity. A comparison of such ratios existing before and after the adoption of the new administrative organization ought to reveal

<sup>1</sup> This analysis was suggested by Clarence Heer's *The Post-War Expansion of State Expenditures* (Institute of Public Administration, 1926).

whether any reduction in overhead costs has actually taken place. Such an examination has proved unconvincing. The ratios fluctuate from year to year; their fluctuations vary for different activities and in the several states. No definite trends are noticeable; consequently, changes in trends cannot be studied.

A brief survey of state supervising methods and problems will indicate why such an analysis of the ratios of supervising costs to total expenditures per administrative function is unfruitful. The variety of variable factors involved in administrative supervision is too great for laboratory isolation. A state appropriates large sums for the promotion of agriculture; it may expend the money itself directly, may apportion it among the counties, or may subsidize agricultural organizations. Likewise, the methods of supervision may vary. The state itself may supervise the work through agents from a central office; it may create agricultural districts and operate through district supervisors; or the state may rely for supervision entirely upon the county officials. The use of these various methods of spending the appropriations and of supervising the work performed necessarily results in different supervising costs and may, in fact, result in varying effectiveness of supervision. Single states frequently employ some or all these different methods of allotting funds and supervising work; and from year to year the emphasis placed upon any one method may change.

The comparison of supervising ratios among the several states is obviously even more difficult. The problems of administrative supervision in Rhode Island are vastly different from those in states of greater area, such as California or Texas. The problems of road building, both construction and supervising costs, in the Rocky Mountain states vary from those confronted by the prairie states of the mid-west. Nor are the social and the supervision problems in public health, labor protection, or welfare administration of industrial and urban New York in any manner comparable to those of the agricultural and rural Dakotas.

Thus far we have examined various statistical methods in an effort to learn what, if any, changes have occurred in governmental efficiency and economy as the result of the adoption of state administrative reorganization. The results proved unfavorable to the statistical approach. But suppose the tests had demonstrated positive changes; the question would still remain whether the results were traceable to administrative reorganization. Here statistics are of even less avail than in an effort to discover changes in expenditures and activities.

In medical laboratory experimentation the bacteria of disease are isolated before any attempt can be made to analyze their characteristics, causes, and consequences. In an evaluation of the changes that have been adopted in administrative reorganization codes a similar process is essential. Reorganization plans involve several important aspects—a short ballot, executive control, single-headed and functional departmentalization, central fiscal supervision, and advisory committees. Ideally, all these features should be adopted; actually, however, they have been incorporated into the reorganization legislation of the several states in widely varying degrees. No state as yet has accepted all the elements of administrative reorganization that the proponents of the movement advocate. Administrative reorganization, then, is not a single entity, but a composition of several reform plans. Can the operation of this new machinery be sufficiently dissected and split up to isolate the effects of the introduction of each of these component elements upon the efficiency and the economy of administration? How much of the increase or decrease of efficiency and economy that may be found to have taken place must be attributed to the altered administrative machinery, how much to the quality of the governmental personnel, and how much to the spirit and personality of the chief executive and his subordinates? The multiplicity of factors in reorganization plans, the difficulties in their isolation, and the presence of such non-measurable elements as personality render statistical methods useless in an effort to understand to what degree administrative reorganization legislation is a causal factor in changes of governmental economy and efficiency.

Statistics prove even less fruitful in deciding what, if any, economies in state expenditures are desirable. The question can well be raised whether decreases in expenditures, or whether reductions in supervising costs, are evidences of economy. Economy cannot be conceived merely as reductions in governmental expenditures. The purpose of administrative agencies is service—service to the people or to special groups. The notion that a government governs best when it governs least has been definitely laid aside with the assumption by the states of factory inspection, food examination, disease control, and agricultural experimentation. With the large and growing influence that administration is exercising on health and industry, the characteristic of good government becomes, not the economy of expenditures, but the adequacy of the services rendered. True, a reduced governmental personnel through more efficient methods or by the elimination of padded political posi-

tions represents real economy. Administrative consolidation may reduce some wastes from overlapping of state agencies. But the expenditure column itself carries no means of evaluating the administration; the quality of the services rendered cannot be learned through figures or decimal places. In fact, a reduction of governmental expenditures or of supervising costs, far from being cause for rejoicing, may be fraught with serious disaster.

The attempt to evaluate state administrative reorganization through any statistical analysis of state expenditures and activities has failed. The statistical approach thus cannot assist us in learning whether the new mechanism of administration has produced increased efficiency or economy. The second major object in evaluating administrative reorganization is to see whether this movement has brought into public office a better grade of administrator.

An attempt to discover statistically the changing quality of state officials involves: (1) the establishment of criteria for public administrators, (2) the examination, in the several states over a period of years, of the major administrative appointments and elections and an inquiry into the training and abilities of such appointees, and (3) the employment of statistical techniques to discover the types of administrators that the different systems of administrative organization tend to attract. Such an endeavor is, however, fruitless of results. An evaluation of this nature must in its very essence be qualitative and consequently subject to the shortcomings of subjective investigations. In the first place, the type of man that is desirable for any given administrative post is not as yet generally agreed upon by students of administration. In the second place, if any given list of characteristics were drawn up, the question whether given administrators possessed the desired qualities would still remain open to individual evaluation and prejudices. The human factor, so important in handling men or in solving administrative problems, is by far too intangible for statistical analysis. And in the third place, does the nature of the administrative machinery attract high-quality officials, or is it the spirit of the men steering the machinery that attracts able surordinates?

This last query leads into the question whether the quality of administrative officials and personnel is attributable to the new administrative organization or to the type of governor who is heading the administration. The reorganization of Ohio, with its large executive control, was employed by Governor Davis (so claim various citizens' organizations of that state) to build for himself a strong political

machine. Charges have been made that the departments of welfare, health, and highways were filled with incompetent political spoils appointees. In Ohio high-quality administrators were discouraged from entering the public service. Public health, charitable, highway, and church organizations opposed the Ohio reorganization scheme after its proposal, fought Davis's appointments, and advanced a plan to take most of the state activities out of politics and beyond the control of the governor. On the other hand, when Governor Pinchot put into operation the Pennsylvania administrative code, he endeavored to eliminate the spoilsman from office, to destroy political sinecures, and to wipe out graft. His administration succeeded in attracting to the public service men of larger caliber than had theretofore appeared upon the Pennsylvania payroll. Due undoubtedly to the quality of Pinchot's appointments and to the eradication of graft, citizens' and welfare organizations did not fight the operation of the Pennsylvania administrative code. Are the contrary results of administrative reorganization in Ohio and Pennsylvania traceable to the new political machinery or to the personality of the leaders? Could Davis's maladministration have existed on such a large scale under Ohio's previous system of administrative disintegration? Could Governor Pinchot as readily have attained his achievements under the old order of administrative decentralization in Pennsylvania?

A statistical evaluation of administrative reorganization is fraught with insurmountable obstacles. Its failure can be ascribed to four primary factors. The first three may in time be eliminated; the last will always remain to trip the investigator. These are: (1) The lack of complete and adequate financial data. Many of our commonwealths possess but meager records of the money expended and of the work performed by their administrative agencies. (2) The changing methods of state financial reporting. State finance officials have completely lacked consistency in their methods of reporting and recording expenditures. In addition, with the adoption of centralized fiscal supervision and control by some of the states, the methods of state bookkeeping have considerably altered. (3) The non-comparability of data among several states. Standardized financial and administrative reporting among those states that do possess adequate records is virtually nonexistent. The methods of recording expenditures and accomplishments vary from state to state. The utmost care is consequently essential in comparing the data of any two states, or even of a single state over a period of years. (4) The presence of numerous variable factors that render impossible any truly objective interpretation of the material

collected. These factors, especially that of human ability and qualities, cannot be isolated and reduced to comparable units. Their very existence renders any analysis of administrative efficiency or of governmental costs susceptible of more than one interpretation. Improvements may take place after the adoption of reorganization legislation. The increased efficiency, if it can be discovered and measured, may possibly be attributed to the new machinery. But, on the other hand, the changes for the better may have been accomplished by more effective leadership, by a higher grade of personnel, by improved administrative techniques, or by the elimination from the scene through external causes of perplexing administrative problems previously existent. Nor can we safely generalize from results of administrative consolidation in a department of highway construction to results for all governmental activities, or from Pennsylvania to all states that have enacted administrative codes. The problems faced by each bureau and by each commonwealth are characteristically its own; they must be subjects for individual observation. Generalization in evaluation is dangerous.

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## NOTES ON JUDICIAL ORGANIZATION AND PROCEDURE

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**The Judicial Council Movement.** Woodrow Wilson wrote that no government is better than its courts, to which ex-President Taft replied that our judicial failure has been more outstanding than our failure in municipal government. The task of making our courts as efficient as possible is thus both an important and an urgent one.

Many factors have contributed to the present charges of inefficiency, but none perhaps of greater weight than that of delay. This has been particularly true of the larger cities, with their principal trial courts as much as two years behind in their work. The jury system, both in its expense and delays and in its freedom from control by the courts, has been a frequent source of complaint. English and Canadian writers have been telling us that their juries are generally selected in a few minutes, and that almost never does it take more than half an hour. Having impanelled the jury, the case is disposed of expeditiously, even murder cases consuming but three or four days at most. In Detroit, a murder case was called just as a judge of the Ontario High Court arrived to hold the assize court directly across the river. The Canadian judge tried nearly thirty contested cases, divided equally between criminal and civil actions, sent nine persons to the penitentiary, and adjourned court while in Detroit the jury was still incomplete.

Such comparisons are anything but complimentary to our courts and their procedure. Business has been driven to a realization that even a lean settlement is to be preferred to a law-suit. Substitutes for court action are being found not only in commercial arbitration, but also in administrative boards and commissions. Charges are heard that the rapid expansion of the scope of administrative activity is "standing proof of the inability of our unorganized and decentralized judicial systems to expand to meet modern needs." Dean Pound has expressed fear lest, in the wake of the administrative board, "nothing of importance be left to the courts." Although it may well be that commissions have a more fundamental place to fill than merely to supersede court action, the fact that their development has been hastened by the inability of the courts to keep pace with the social system seems incontestable.

In no other country of the world is so great a force maintained for a given amount of litigation. Yet, in frantic efforts to enable the courts to keep up with their work, we continue to add judge after judge to the bench, only to find that the defects are more fundamental than can be solved by mere numbers. Early in the present century a concerted movement was started to find ways for the more efficient utilization of the existing judicial machinery. One of the most promising products of this movement is the judicial council.

*English Court Administration.* Our state and federal judicial systems were founded upon the concepts of independence and localism. Not only were the courts rendered independent of the other departments of government, but each court was made largely independent of the others. As expressed by Chief Justice Taft, each judge was free to paddle his own canoe. This independence was further enhanced by the second concept, whereby the courts of each section were virtually distinct from those of the rest of the state or nation. The problem that had to be met was how to knit this mass of courts into a unified whole, and to provide some sort of effective administrative supervision. Above all, a need was felt for some agency whose duty it would be to make a continuous study of the working of the courts, and to advise as to changes that must of necessity be made from time to time. Leaders of bench and bar alike agreed with Judge Cardozo that the absence of some such agency was "one of the anomalies of our legal institutions."

In opening the crusade for a more scientific administration of our courts, Roscoe Pound had called the attention of the legal profession to the advantages of the modern English court organization and procedure.<sup>1</sup> The conspicuous success of the English reforms, as contrasted with our own half-hearted measures, gave promise of a solution. It was but natural that we should turn to them for guidance.

The first glance was singularly disappointing. England has rejected both of the traditions of our court system, and has clung instead to centralized authority within a centralized court. We have no official comparable to the Lord Chancellor, who not only is the true head of all the courts of England and Wales, but also knits together the courts, the cabinet, and Parliament. It was obvious that nothing approaching the English system of organization could be secured without thoroughgoing amendment of our constitutions; and even then, to secure an

<sup>1</sup> "The Causes of Popular Dissatisfaction with the Administration of Justice," 29 *Am. Bar Assoc. Rep.* 395 (1906).

official occupying the position of a Lord Chancellor was, for the time at least, out of the question. But it was equally obvious that the securing of many of the essentials of the English reforms, such as the mobility of judges and a simplified procedure, need not wait for such a change. We took another look, and our eye fell upon the Rules Committee.

This committee is one of the outstanding contributions of the English reforms to judicial organization, and its success in guiding the development of a business-like procedure is still the marvel of the common law lawyer. Here we saw a small council, made up of *nisi prius* as well as appellate judges, and since 1894 of practicing lawyers as well, proving its worth as an executive agency in one of the most important fields of judicial administration. Why not adapt such a committee to the wider demands of our own court systems? The idea seemed practicable, and it appeared to fit in with the proposals of the leaders for reform.

*Judicial Councils Established.* It would seem that this movement did not bear definite fruit until 1922, when Ohio provided for the first modern judicial council, and the federal government set up a Board of Senior Circuit Judges. As early as 1913 Wisconsin had established a Board of Circuit Judges, made up of all of the principal *nisi prius* judges of the state. This board, which has met annually since that date, has instituted various reforms in practice and procedure. Through the power of the chairman to "request judges whose calendars are not congested to assist those judges whose calendars are congested," it has been instrumental in equalizing the work of the courts and, except in Milwaukee, in keeping them well up with their work. But the Wisconsin experiment does not seem to have attracted the immediate attention of the other states.

Two years later New Jersey and Colorado, the first by statute, the second by order of the supreme court, set up councils to recommend changes in the rules of practice and procedure. Neither was given administrative powers, and the scope of their activity was too restricted to satisfy the needs of the situation. Neither has been active, and the Colorado council, although still maintaining a paper existence, has lapsed into a state of complete desuetude.

In 1919 the legislatures of two states, Massachusetts and Oregon, appointed commissions to study the entire field of judicial organization and to recommend ways and means of improvement. The Massachusetts commission stated that "it is not a good business arrangement for the commonwealth to leave the study of the judicial system and the formulation of suggestions for its development almost entirely to

the casual interest of individuals," and recommended the establishment of a permanent official body, composed of lawyers and judges, to perform these functions. Chairman Carey of the Oregon commission made a similar suggestion.

Neither legislature acted at the time, and Ohio stepped in to establish what is generally spoken of as the first judicial council. A statute of 1922 made provision for a council consisting of four judges of appellate courts, two *nisi prius* judges, and three practicing attorneys, the chief justice of the supreme court being chairman. The council is required to render biennial reports to the legislature, in addition to submitting suggestions from time to time for the consideration of the judges of the various courts. Power is given the council to compel witnesses to appear and testify, and to require the clerks of the various courts to render periodic reports. The statute is one of the most complete and best drafted of all the judicial council acts, but the legislature has always failed to make the necessary appropriations for expenses. The chief justice reports that consequently the council "has never functioned except in the most perfunctory way. . . . We [the members of the council] have felt that it is useless to try to do anything without funds, and we have also felt that it was hardly the proper thing to solicit private funds, fearing that the people, and perhaps the legislature as well, would feel that anything that might be recommended by the council would reflect the notions of those who had contributed to its expenses."<sup>2</sup> The council has never made a report to the legislature, and has made but few suggestions to the judges of the various courts.

In spite of the failure of the Ohio act, the year 1922 did not pass without a definite advance being made. Ex-President Taft, always a leader in the movement for judicial reform, now enjoyed the added prestige that accompanies our highest judicial office. In 1914 he had proposed that "authority and duty should be conferred upon the head of the federal judicial system, either the Chief Justice or a council of judges appointed by him, or by the Supreme Court, to consider each year the pending federal judicial business of the country and to distribute the federal judicial force . . . through the various districts and intermediate appellate courts" in accordance with the amount of business to be done.<sup>3</sup> It is clear that the essentials of his proposal were the mobility of judges and some sort of administrative control to make this

<sup>2</sup> Letter from Carrington T. Marshall, president of the council, dated August 18, 1928.

<sup>3</sup> "Attacks on the Courts and Legal Procedure," 5 Ky. L. Jour. 14-15.

mobility effective; precisely what sort of body should wield this control was of less immediate importance. When the Senate bill of 1921 to provide for additional judges was amended to provide for a Conference of Senior Circuit Judges, the Chief Justice immediately threw his influence behind the bill.<sup>4</sup> Its passage in the latter part of 1922 marks one of the most forward-looking steps yet taken by Congress for the unification and efficiency of the federal courts. The provision for the mobility of district judges, under the supervision of the Chief Justice and the senior circuit judges, runs counter to the traditions both of independence and localism, and would appear to indicate a turning point in our federal court system. Many writers have refused to recognize the Conference as a judicial council because it is composed solely of appellate judges, neither the *nisi prius* courts nor the bar being represented. However this may be, it has undertaken the work of such a council and is entitled to rank beside the most successful of them.<sup>5</sup>

With the impetus given by the federal and Ohio acts, agitation for the creation of judicial councils bore fruit in a number of states. In 1923 Oregon established a small council of five, two appellate and three *nisi prius* judges. The next year Massachusetts created a council numbering four attorneys among its nine members. These were followed a year later by California<sup>6</sup> and Washington, and in 1927 Connecticut, Kansas, and Rhode Island completed the list to date. North Carolina and North Dakota followed the Wisconsin plan of a conference of all the judges from the principal courts of the state.

*Composition.* Except for the federal Conference, which contains only appellate judges, and those states which have adopted a general conference of judges rather than a representative committee, the composition of the judicial councils now existing is fairly uniform. Their size varies from five members in Oregon to eleven in California, nine being the most favored number. In each case the final court of appeals is allotted from one to three members, the *nisi prius* courts from two to six. Ohio and California allot one and three seats, respectively, to their intermediate appellate courts. All but two states, Oregon and California, provide for membership of practicing attorneys who hold

<sup>4</sup> It is possible that the proposal for the Conference originated with him. See the statement of Representative Walsh in the House, 62 Cong. Rec. 202.

<sup>5</sup> At the time when the bill was passed the Chief Justice was also favoring a mixed council of judges and attorneys to regulate practice and procedure. See 6 Jour. Am. Jud. Soc. 36, 46.

<sup>6</sup> Constitutional amendment in effect November 2, 1926.

no judicial office,<sup>7</sup> and Connecticut and Rhode Island add a prosecuting attorney. Two of the most recent acts, those of Kansas and Washington, give membership to the chairmen of the judiciary committees of the legislature.

The judicial members of the council who are not expressly designated by statute are almost universally appointed by the chief justice, whereas in Ohio, Massachusetts, Connecticut, and Rhode Island the governor appoints the practitioners. Except in Massachusetts and Kansas, where the council selects its own chairman, the chief justice or his representative is *ex officio* chairman of the council.

*Powers.* The natural hesitancy on the part of the legislature to bestow extensive authority upon a new type of agency has restricted most judicial councils to fact-finding and recommending powers. Aside from their powers in connection with fact-finding,<sup>8</sup> most of the councils have no authority to issue mandatory orders to any judge or court official. Their functions may be summarized as follows: (1) to conduct a continuous survey of the volume and condition of business in the various courts, the work accomplished, and the character of the results; (2) to devise ways of simplifying judicial procedure and improving the administration of justice; (3) to acquaint all courts with the results of various experiments in other jurisdictions, and to foster the adoption of such changes as seem in the interest of uniformity and the expedition of business; (4) to bring to the attention of the political departments of the government all problems which cannot be solved except by amendment of the laws or constitution; and (5) to conduct such special investigations as the legislature or governor may desire, and to act as an advisory body on such bills as shall be submitted for the council's consideration.

A few councils have been given additional powers. The California council has control over the assignment of judges to care for crowded calendars. The Wisconsin and federal conferences, through their chair-

<sup>7</sup> The Oregon council, in its 1926 report, recommended that two practicing attorneys and one prosecuting attorney be added to the council, as well as the chairmen of the judiciary committees of the legislature. The California council contains one justice of the peace, who is, of course, primarily engaged in the practice of law. R. H. Phillips, secretary of the Connecticut council, reports that "without active practitioners on it, the council would not function."

<sup>8</sup> Nearly all can require reports of various court officials, and a few of any government officer. An amendment giving such authority was found necessary in California, where its absence seriously handicapped the council in its initial work. Several can compel witnesses to testify and produce books and documents.

men, enjoy similar powers. In addition, the California council has a wide rule-making power to supplement the statutes on practice and procedure. These three, two of which we have mentioned as being frequently classed as other than judicial councils, stand out from the rest as to the scope of their authority.

*Accomplishments.* To generalize in regard to the activities of the different judicial councils is an impossible task. As in all new undertakings, it is the aggressive spirit of one or a few that counts, over and above mere paper organization. Several of the councils are only getting under way, and it is too early to pass judgment upon their work. Others appear to have failed to take the first steps. The Oregon council was inactive for two years because of lack of funds. For the same reason the Ohio council, after more than six years of statutory life, has not yet set about its tasks. On the other hand, we find the Massachusetts council holding fortnightly, or even weekly, meetings throughout the year, and the California council devoting the full time of one member to its work, he being relieved of his regular judicial duties. The potential value of the judicial council has been well established by the accomplishments of these more active groups.

*Assignment of Judges.* When the California council was organized in November, 1926, it felt that its first task should be to survey the judicial business of the state. Judge Hollzer was released from his duties as judge of the Superior Court and devoted his entire time to supervising this work. The results revealed some startling inequalities in the division of labor between the different *nisi prius* judges. Whereas those of the metropolitan districts were constantly falling farther behind in their work, some of the judges in the outlying districts tried as few as six cases in a year. The judicial council act provided a remedy for this condition through the mobility of judges, and the council took immediate advantage of this provision.

During the year 1927 nearly 800 assignments of judges were made, chiefly for the trial of cases in the superior courts, which are the principal *nisi prius* courts of the state. The same procedure has been followed during the current year. When the council was first organized, the Los Angeles courts were nearly two years behind in their work. Today, without impeding the work of the outlying districts, civil cases are being tried within ninety days and criminal trials are heard less than three weeks after the entry of the defendant's plea. Cases are now being disposed of at a faster rate than they are set for trial. The decrease in the number of cases filed seems to show that this healthy

condition of the calendar has produced many settlements and dismissals, and has reduced to a minimum the opportunities of defending merely for purposes of delay.<sup>9</sup>

The more complete utilization of the trial court personnel placed an added burden upon an already overworked system of appellate courts. By assigning judges of the superior court to the district courts of appeal, a far greater number of appeals was determined than ever before, and these tribunals were prevented from falling even more in arrears. The problem of still further relief for the appellate courts has recently occupied the attention of the council, and a constitutional amendment has been prepared which will permit substantial changes in their jurisdiction.

Similar control over the assignment of judges has also aided the federal and Wisconsin councils in relieving court congestion. Chief Justice Taft has referred to such mobility as "a change that ought to be made in every state."<sup>10</sup> Its success when under the supervision of a judicial council is in striking contrast to its almost negligible influence when left to the individual judge to arrange under a system of reciprocity.

*Master Calendar.* Through the master calendar the California council is doing for the judge of the busy jurisdiction what the assignment plan does for those of the outlying districts. Under this plan the separate calendars of each department are abolished and a single central calendar substituted. As a judge finishes a case he calls the main office, and the next case on the master calendar is sent to him for trial. In this way the full time of each judge is utilized, and the possibility of a case not being reached on the date set is reduced. The fact that neither parties nor judge know who will try a given case is felt to be not without its advantages.

This plan was first tried in San Diego and Los Angeles. Six months' experience established its usefulness, and early last August, by an order of the council, it went into effect in every superior court of the

<sup>9</sup> A similar experience in Detroit seems to bear out the conclusion that the number of suits formerly contested for purposes of delay exceeds those now brought because of the certainty of a speedy trial. The Detroit circuit court, feeling that many appeals from justices' courts were taken only for delay, decided to try such cases in the inverse order of their appeal, thus keeping the current appeals to date. Since the city was growing, an increased number of appeals would normally be expected. Instead, the number taken fell off nearly one half.

<sup>10</sup> Quoted by Chief Justice Waste, "One Year of the Judicial Council," *Cal. St. Bar Jour.*, Jan., 1928.



state having two or more judges. The plan seems elementary, yet the fact remains that it took a judicial council to bring it into effective state-wide operation. There are many other jurisdictions where it could be used to advantage, and where a judicial council, charged with finding out what other states are doing, could hasten its adoption.

*Practice and Procedure.* The California council is the only one thus far given any appreciable measure of direct control over the practice and procedure of the courts. New sets of rules governing the trial of cases in both the superior and appellate courts went into effect last August and September, and are expected greatly to facilitate the business of those courts. Other proposals, involving the amendment or repeal of existing statutes, will be placed before the next session of the legislature in January. The promptness and thoroughness with which the council has entered upon this work, as compared with the hesitancy or total lack of activity on the part of the various supreme courts that have been vested with such powers, raises an interesting question as to the future of the judicial council as a rules committee.

Even in the absence of authority to make binding rules of practice and procedure, many councils have not been without beneficial influence in these fields. We have recently witnessed an outstanding example in the federal courts. When the Fall-Sinclair jury was dismissed because of jury tampering, we took it for granted that we were to witness another of our now famous scandals of the drawn-out examination of prospective jurors on the *voir dire*. We were surprised, on picking up the morning paper, to find that the jury was already impanelled and the case ready to proceed. The court had merely adopted the suggestion of the Board of Senior Circuit Judges that "the examination of prospective jurors shall be by the judge alone." Other recommendations by various councils, although attracting less attention at the moment, are even more promising of future betterment.

*Statistics.* "Everyone who has attempted to deal with the question of delays in the administration of justice has found his path obstructed by a mass of unintelligible statistics in respect to the exact condition of the dockets and the real business of the courts."<sup>11</sup> This condition blocks the solution of many defects, and even prevents agreement as to the presence or absence of the defects themselves. It fosters vague accusations and unworkable proposals for change. If the

<sup>11</sup> Report of the Fifth Conference of Senior Circuit Judges, Rep. Atty. Gen. (1926), 5, 7.

judicial council movement does nothing but furnish us with an expert and efficient fact-finding body, it will be well worth its cost. A well developed system of judicial statistics, such as that found today in England, is not to be had for the asking, and its acquisition will be one of the most difficult assignments for our councils to fulfill. Many of them have entered upon the task wholeheartedly, and the results thus far accomplished, considering the short time and limited funds available, are encouraging.

One of the greatest defects of the past has been that most jurisdictions were unacquainted with what other states and foreign countries were doing. The judicial council is furnishing a clearing house for exchanging and utilizing such information. Several councils have felt that first-hand contact with the work of other jurisdictions is the most valuable. Soon after organizing, the Massachusetts council sent one of its members to England to study court organization and procedure. His report has been the basis of many successful reforms. The recently organized council of Connecticut has sent a prominent member of the bar to study English appellate procedure. One of the most promising investigations is the recent survey, made by the California council, of the methods of court administration and the practice and procedure of the principal metropolitan centers of the United States. At the suggestion of Governor Young, correspondence was supplemented by a two-months' survey tour by a member of the council which carried him into the principal cities of the East and Middle West, as well as certain portions of Canada. The results of this survey are now being compiled, and will be published by the end of the present year. It should prove valuable, not only to California, but to other jurisdictions as well.

*Advisory Body on Legislation.* Although no attempt is here made to give a complete account of the activities of our various judicial councils, mention must be made of their value as advisory bodies on legislation. Several state legislatures have apparently adopted the regular practice of referring all important bills dealing with the courts to the judicial council. At the request of the legislature or the governor, various special investigations have been undertaken as a basis for future legislation. Many important statutes have been completely drafted by them. Such a permanent official body, intimately acquainted with what the courts are doing and trying to do, would seem to be the logical agency for such work.

*Expense.* The charge of excessive cost can scarcely be brought against the judicial council. Many councils have been seriously handicapped in their work by lack of funds. Most of them are working under appropriations of \$500 to \$1,000 a year, which, although sufficient for minor undertakings, make impossible the extensive surveys that conditions would seem to require. The activity of the California council is no doubt to be explained largely by the fact that the governor and legislature have placed \$50,000 at the body's disposal for two years' work. Unless the results fall far short of present indications, the saving to the state will be greatly in excess of this sum, and should give impetus to other states to follow a similar course.

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**The Justice of the Peace—Recent Tendencies.** The justice of the peace system exists today in every one of the forty-eight states. It was a product of a type of civilization in which such an arrangement for the trial of petty cases seemed appropriate. Increased population, the construction of modern highways, the development of means of transportation and communication, the establishment of a more definite system of legal principles and rules—all these have contributed to remove the conditions that formerly made justices of the peace necessary in every community. In recent years there has been much discussion and some action looking to the curtailment or the abolition of justices of the peace courts, but there has been little outright abolition of the justices courts in rural communities.<sup>1</sup> The decision of the Supreme Court of the United States in the *Tumey* case<sup>2</sup> has served to direct attention to the defects of the justice of the peace system.

An examination of the constitutions of the forty-eight states reveals the fact that the provisions concerning justices of the peace may be grouped in reasonably definite classes, first, with respect to legislative control over the office as such, and secondly, with respect to legislative control over the jurisdiction of the justices.<sup>3</sup>

<sup>1</sup> "The Passing of the Justice of the Peace," 12 *Virginia Law Register* 110 (1926); *County Government in Virginia*, prepared by the N. Y. Bureau of Municipal Research (January, 1927), pp. 48-50; *Constitutional Convention Bulletins Illinois* (1920), pp. 762-764; "County Government and Administration in Iowa," *Applied History* (1925), pp. 322-330.

<sup>2</sup> *Tumey v. Ohio*, 47 U. S. 437 (1927).

<sup>3</sup> Chester H. Smith, "The Justice of the Peace System in the United States," 15 *Cal. Law Review*, 118-141 (1926-27).

The types of provisions relating to legislative control over the office of justice of the peace as such are: (1) those which provide expressly that the judicial power shall be vested in designated courts of which the justice of the peace is one,<sup>4</sup> (2) those which provide that the judicial power of the state shall be vested in such inferior courts as may be established by law, and in which the justice of the peace is not mentioned,<sup>5</sup> (3) those which provide that the judicial power of the state shall be vested in such courts as may be established by law, and further provide that a competent number of justices of the peace shall be appointed or elected,<sup>6</sup> and (4) those which provide expressly for the justice of the peace as one of the courts of the state, but which provide further that the legislature may abolish the office of justice of the peace throughout the state, or which permit such abolition.<sup>7</sup>

The types of provisions relating to legislative control over the jurisdiction of justices of the peace are: (1) those which definitely specify the jurisdiction,<sup>8</sup> (2) those which provide that the legislature may fix the jurisdiction, but not to exceed a specified limit, which is expressly stated,<sup>9</sup> (3) those which provide specifically that the legislature may fix the jurisdiction,<sup>10</sup> and (4) those which imply that the legislature may exercise this power.<sup>11</sup> Some of the constitutional provisions in regard to jurisdiction fall in one classification for civil cases and another for criminal trials, but, by and large, the classification as given includes both types of jurisdiction.

<sup>4</sup> Ariz., Ark., Del., Fla., Ga., Idaho, Ill., Kans., Ky., Md., Mich., Minn., Miss., Mo., Mont., Nev., N. Mex., N. C., Okla., Oregon, S. D., Tenn., Texas, Utah, Wash., W. Va., Wis., Wyo.

<sup>5</sup> California.

<sup>6</sup> Ala., Colo., Conn., Iowa, Ind., Me., N. H., N. Y., Ohio, Pa., R. I., S. C., Vt.

<sup>7</sup> La., Neb., N. J., N. D., Va. The North Dakota constitution (1913), Sec. 112, reads: "The legislative assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of county courts or elsewhere." The Massachusetts constitution (1780) contains provisions with reference to tenure of office (Ch. 111, Art. iii) and removals (Amends., Art. XXXVII) of justices of the peace, and nothing more. On jurisdiction, see 3 Pick. (Mass.), 508 (1827).

<sup>8</sup> Ala., Ark., Fla., Ga., Ia., Miss., N. M., N. C., N. D., Tex., W. Va., Wyo.

<sup>9</sup> Ariz., Cal., Colo., Idaho, Mich., Minn., Mont. Neb., Nev., N. H., S. C., S. D., Utah.

<sup>10</sup> Conn., Del., Ill., Ind., Kans., Ky., La., Md., Mo., N. J., Okla., Ore., Pa., R. I., Tenn., Va., Wash., Wis.

<sup>11</sup> The office is created by constitutional provision, but with no provision for jurisdiction, in Maine, Mass., N. Y., Ohio, Vt.

To abolish outright, then, the office of justice of the peace would require in most states a change in the constitution; in a minority of states legislative enactment would suffice. But no state has abolished the system throughout its bounds, and in only a few states has any serious suggestion to this end been made. In the Louisiana constitutional convention of 1921 an attempt was made to abolish the office throughout the state, but the argument that it was a poor man's court fulfilling the needs of rural communities prevailed; hence, instead of abolishing the justices courts, a provision was adopted which gives the legislature complete power over these courts, even the power to abolish them.

The question of fee compensation for minor courts has been the subject of legislation in some states. Justices of the peace in California are paid by salary.<sup>12</sup> All minor courts in Nevada and Arizona are on a salary basis.<sup>13</sup> By constitutional provision in Louisiana and South Carolina, the justices receive a salary instead of fees in criminal cases.<sup>14</sup>

Legislatures have used indirect methods of impairing the jurisdiction of the justices of the peace, either by taking away from the justices practically all civil and criminal jurisdiction, where the legislature is empowered to do so, or by creating other types of minor courts with concurrent jurisdiction. There has been a tendency in recent years to establish municipal courts, small claims courts, and juvenile and domestic relations courts in towns and cities, with the result of reducing materially or abolishing the jurisdiction of justices.<sup>15</sup> In some instances these courts have jurisdiction over a considerable area adjacent to the town or city, or even throughout the county. Where county courts are established, they in some cases supersede justices of the peace courts; in most instances the county courts exist alongside justices' courts.

In Ohio the system of compensation whereby the remuneration of justices of the peace is directly dependent on the outcome of criminal cases before them was the subject of attack on constitutional grounds in the *Tumey* case. The result of the holding in that case is that a judge is disqualified, on grounds of personal interest, where he receives

<sup>12</sup> California Code of Civil Procedure (1915), Sec. 102(b).

<sup>13</sup> "The Constitutionality of Fee Compensation for Courts," 36 *Yale Law Jour.*, 1171-75 (1926-27).

<sup>14</sup> Louisiana constitution (1921), Sec. 50; South Carolina constitution (1895), Art. V, Sec. 20.

<sup>15</sup> Reginald H. Smith, *Justice and the Poor* (N. Y., 1919).

his fees only if the defendant is convicted.<sup>16</sup> Apparently this decision has been largely responsible for two immediate results in Ohio, first, the enactment of a statute designed to save to the justices of the peace their fees in spite of the holding in the *Tumey* case, and secondly, a definite move on the part of the bar of the state for the establishment of a system of uniform inferior courts.

Senate Bill No. 72 enacted by the 1927 session of the Ohio legislature amends the General Code on the matter of fees for justices of the peace in criminal proceedings.<sup>17</sup> Under the terms of this act the justices of the peace are required to pay into the treasury of the county all fees collected in state criminal cases in which the magistrate has final jurisdiction. Once a month the magistrate and other officers receive as compensation from the county general fund an amount equal to the sum-total of fees earned by them in such cases. It is doubtful whether the objection of the *Tumey* case is met by such an expedient.

A committee of the Ohio State Bar Association made a report on June 19, 1928, in which it recommends the passage of a bill by the legislature to create a rural court in each of the counties of the state.<sup>18</sup> In each county this rural court, a court of record, would succeed to the powers, duties, and jurisdiction of justices of the peace.<sup>19</sup> The "rural judge," who must be a practicing lawyer of three years' experience, and one or more magistrates are to be elected in each county; the judge, by the electors of the county outside municipal court districts; the magistrates, by the electors of magisterial districts, each such district to contain eight thousand to eighteen thousand inhabitants. The only requirements for magistrates are that they must be of good moral character and electors of the magisterial districts. The judge, magistrates, and constables are to be paid by salary, all fees being paid into the general county fund. The seat of the rural court is to be at the county court house, although provision is made that the rural judge, or a magistrate at the direction of the judge, may hold court at any place in the rural district where so doing would contribute to the convenience of the parties or to the ends of justice. Under this plan the fee system would disappear. If there were a real supervision of the magistrates by the rural judge, the system would have obvious merits.

<sup>16</sup> *Tumey v. Ohio*, 47 U. S., 437, decided March 7, 1927.

<sup>17</sup> *Laws of Ohio*, 1927, p. 269.

<sup>18</sup> Committee on Establishment of Uniform Inferior Courts.

<sup>19</sup> Constitution of Ohio (1851), Art. 4, Sec. 9, as amended Sept. 3, 1912.

Something has already been done in Ohio toward replacing justices of the peace. Over a score of the large cities have for many years had municipal courts which, speaking generally, have jurisdiction not only in the city where they sit, but also in the township or in a district composed of one or more townships. These courts exercise the jurisdiction usually held by justices of the peace.

In Virginia, cities, for the most part, are excluded from the jurisdiction of the county governments, and the problem of the justice of the peace is essentially rural. The constitution requires that "the General Assembly shall provide for the appointment or election and for the jurisdiction of such justices of the peace as the public interests may require,"<sup>20</sup> and the usual system of justices of the peace courts has been established by legislation. Recent acts passed by the Virginia Assembly make a beginning toward reform in the justice of the peace system. The act establishing juvenile and domestic relations courts in cities of twenty-five thousand or more inhabitants, with concurrent jurisdiction with justices of the peace within and one mile beyond the corporate limits of the city,<sup>21</sup> and the act permitting counties to have trial justices appointed by the circuit court<sup>22</sup> are indicative of the trend. Even more important in Virginia is the legislation of 1926 permitting the establishment for certain counties of courts with powers comparable to those of civil and police justices of the cities.<sup>23</sup> Chesterfield county has adopted the system provided for by this legislation. The trial justice appointed in this county holds court weekly in several places in the county, and sits in the more sparsely settled portions once a month. The Virginia act of 1926 is optional and is unlikely to solve promptly the justice of the peace problem throughout the state.

A Kansas statute passed in 1927 establishes city courts in Kansas City to take over the jurisdiction of justices of the peace courts, not only in the city, but throughout the county in which the city is situated.<sup>24</sup> A statute of the same year provides for judges for every township located in a county having a population of one hundred thousand to one hundred twenty-five thousand, and these judges have the jurisdiction formerly exercised by justices of the peace.<sup>25</sup> The act

<sup>20</sup> Constitution of Virginia (1902), Sec. 108.

<sup>21</sup> General Laws of Virginia, 1923, Ch. 81.

<sup>22</sup> Virginia Code, 1924, Secs. 4988-4988 (29).

<sup>23</sup> Acts of Virginia Assembly, 1926, Ch. 511.

<sup>24</sup> Laws of Kansas, 1927, Ch. 180.

<sup>25</sup> *Ibid.*, Ch. 182.

provides that justices of the peace of such townships shall have no jurisdiction over any case, civil or criminal, "except in civil actions for the recovery of money only where the amount claimed, exclusive of costs, does not exceed the sum of one dollar."<sup>26</sup> The provisions of this act may be adopted by any cities of the first class, or by cities of the second class having over thirteen thousand inhabitants. The judges of these courts must be lawyers of five years' practice.

In Mississippi a 1926 statute establishes a county court in each county having a population exceeding thirty-five thousand, or, not having such a population, if it has an assessed valuation of real and personal property exceeding seventeen million dollars, and in either event containing a municipality of five thousand or more inhabitants as shown by the federal census of 1920.<sup>27</sup> Any other county in the state may establish a county court. The judges of the county courts must have the qualifications required for judges of the circuit and chancery courts.

The Mississippi county courts have jurisdiction concurrent with justices of the peace in all matters, civil and criminal; they are given exclusively the jurisdiction previously exercised by justices of the peace in eminent domain, in the partition of personal property, and in actions of unlawful entry and detainer. In addition, the county courts have concurrent jurisdiction with the circuit court in misdemeanor cases, and concurrent jurisdiction with circuit and chancery courts in all cases where the principal amount involved is one thousand dollars or less, excluding divorce and alimony, matters testamentary and of administration, minors' business, cases of idiocy, lunacy, and persons of unsound mind.

Ten of the eighty-two counties of Mississippi come within the classification in which the establishment of the county court is made mandatory. Three other counties have by election adopted the system, while three counties by election rejected a proposal to establish it.<sup>28</sup> The Mississippi county courts take a good part of the work from justices of the peace. It is believed that if the court held sessions in each of the five supervisors' districts of the county, instead of at the

<sup>26</sup> In *re Greer* (1879), 58 Kans. 268, 48 Pac. 950, the constitutionality of a similar statute was upheld. But see *contra*, *St. ex. rel. Burke v. Hinkel* (1911), 144 Wis. 444, 129 N.W. 393.

<sup>27</sup> Laws of Mississippi, 1926, Ch. 131.

<sup>28</sup> Biennial Report of the Secretary of State of Mississippi (1926-27), pp. 156-157 (figures are as of May 31, 1927).



county court-house alone, the court would rapidly supplant the justices of the peace.

In Wisconsin, although there has been no amendment of statutes relating directly to justice of the peace courts since the code of 1898, nevertheless these courts have gradually lost much of their former importance. This has been accomplished in part by the creation of special municipal courts, and in other cases by conferring much of the statutory jurisdiction of the justice of the peace upon county courts. The acts creating county courts frequently deprive the justices of the peace of a given county of all criminal jurisdiction and frequently, also, of most of their civil jurisdiction. In Milwaukee county, by special statute, there is only one justice of the peace, and he has been deprived of practically all jurisdiction, though he retains the right to perform marriage ceremonies. A special district court has been created for Milwaukee county, with substantially the criminal jurisdiction of the old justices of the peace courts, and a number of special civil courts set up in the county have relieved the justices of their civil jurisdiction. There are also in Wisconsin thirty-four municipal courts and two superior courts, with jurisdiction co-extensive with that of justices of the peace. In the greater part of the state, however, the old system of justices of the peace remains in effect.<sup>29</sup>

In Maryland a 1927 statute provides for legally trained judges to serve as justices of the peace for Allegheny county. Two courts, known as "the people's courts," have been provided; they have jurisdiction over minor criminal matters and in civil cases involving not over three hundred dollars.<sup>30</sup>

The system of minor courts existing in Hawaii is of interest. The organic act vests the judicial power of the territory in "one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish."<sup>31</sup> Twenty-seven judicial districts have been created.<sup>32</sup> The chief justice of the supreme court of the territory appoints one or more magistrates for each judicial district. They must be lawyers, and they may be removed by the supreme court. The magistrates have exclusive jurisdiction in civil matters involving amounts up to fifty dollars, and concurrent jurisdiction with the circuit courts

<sup>29</sup> Wisconsin Statutes, 1927, Vol. 1, Chs. 253 and 254; Laws of Wisconsin, 1909, Ch. 549; Laws of Wisconsin, 1913, Ch. 702.

<sup>30</sup> Laws of Maryland, 1927, pp. 521-530.

<sup>31</sup> Chap. IV, Sec. 81.

<sup>32</sup> Revised Laws of Hawaii, 1925, Vol. 1, Chs. 14 and 137.

in cases involving amounts up to five hundred dollars. Their criminal jurisdiction extends to offenses punishable by fine or by fine and imprisonment not exceeding one year. Each magistrate must make an annual report to the chief justice of the supreme court of the territory. The magistrate of the Honolulu district receives an annual salary of \$4,800; the other twenty-six districts, with four exceptions, pay an annual salary of \$1,200 or more.

Three methods of solving the justice of the peace situation present themselves: (1) the office may be abolished outright; (2) other types of minor courts may be created alongside the justices of the peace courts, with jurisdiction similar to that exercised by the justices; (3) there may be a limitation of the number of justices and the abolition of the fee system. Abolition of the office of justice of the peace may be accomplished by (1) constitutional provision directly abolishing the office, (2) constitutional provision or amendment authorizing the legislature to abolish the office, followed by legislative enactment, (3) legislation abolishing the office, in the few states where under present constitutional provision that is possible, (4) legislation taking away all, or practically all, jurisdiction and vesting such jurisdiction in other courts. This fourth method of indirect replacement is now being actively employed. Justices of the peace are, however, likely to continue in most of the states, and the evils of the justice system in such states may largely be met by abolishing the fee system, by reducing the number and jurisdiction of justices, and by setting up a more adequate judicial organization for small cases.

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## NOTES ON INSTRUCTION AND RESEARCH

**Significance of Functional Approach in the Introductory Course in Political Science.**<sup>1</sup> Like many other words, the term "functional" as applied to the methods of teaching and studying government sometimes conveys an unintended meaning because of some special connotations to which the reader is accustomed. To some it may imply a study mainly of the multitude of social and economic activities out of which the institutions of government arise; to others it may imply the advocacy of a reorganization of government along the lines of "functional representation" as proposed by many socialists. The former connotation is not necessarily meant and the latter not at all. In the consideration also of the content of the introductory course for students of government, "functional approach" has often been mentioned as being in opposition to the more prevalent "structural" or "descriptive" approach.<sup>2</sup> This, likewise, is not necessarily true, for function and structure are but two aspects of the same thing. If it is a matter of attitude, however, and therefore of emphasis, they may be looked upon as in opposition.

The functional approach to the study of politics is principally one of attitude or point of view. It is, consequently, a functional attitude, more than it is a matter of different content, which it is expected the student will imbibe from the introductory course thus approached. The proponents of these two "opposed" approaches, arguing, it seems, from different premises, often manage to miss each other's basic idea. This lack of mutual understanding seems to invite a statement of the functional approach as it is understood by some one individual, especially if that individual is interested primarily in teaching in the field of the liberal arts and sciences rather than in the technical, professional fields of law, public administration, and what might be called political engineering.

Writers in recent years have deprecated the absence of science from political science. To the present writer the matter of adopting a functional attitude in the organization of college courses in political science

<sup>1</sup> See account of the round table conference on instruction in political science on functional rather than descriptive lines, *American Political Science Review*, XXI, 402-405.

<sup>2</sup> Report of round table conference on orientation courses, *ibid.*, XX, 410-412.

is a question of whether or not those courses will inculcate in the student an attitude of mind, a dynamic concept, which will square with the scientific methods and findings not only in the social but also in the other, more "natural," sciences; whether it will enable the student to expect and to apply truly scientific methods rather than impulsive responses to political phenomena. The functional attitude can be stated simply, but, because of the individual's cultivated background of age-old assumptions, it is not easily applied. And, superfluous though the reminder may appear to some readers, this cultural-background handicap calls for some slight statement of the cultural attitude-equipment prerequisite to a proper teaching of political functions, processes, and agencies.

For purposes of this paper, attention is merely called to certain assumptions as to the equipment of the instructor with the functional attitude. Among other things, it is taken for granted that he has such a concept of the universe, of which political phenomena are a part, that he sees human society as made up of infinitely varied and interlocked and everchanging patterns of association of men—of men who are always functioning or doing something; of men who have a common attachment to geologic, geographic, physical, and biologic phenomena; of men who have fundamental needs in common, who develop infinitely varied and altering appetites, desires, interests, and associational groupings, and who make claims upon and admit obligations toward one another; of men, who, because of their apparently common origin with the rest of biologic life, are all likewise in different states of development, none perfect in any respect, and none ever expected to be perfect, because of the dynamic element of constant and everlasting change and variation. It is expected that he would see that men, because of their inability to assume a completely objective point of view and a complete understanding of themselves, of their desires, frustrations, and sufferings, are continuously asking the "why" of it all, yet have been too easily satisfied with merely being told "what."<sup>3</sup> It is, of course, assumed that the instructor is familiar with the fundamental methods of scientific investigation and thought, not only in the social but also in the natural sciences—that he is familiar with the use of observation, analysis, hypothesis, measurement, inductive reasoning, synthesis, and the making of further hypotheses for purposes of experiment and test. This assumes that in the classroom he approaches

<sup>3</sup> G. E. G. Catlin, *Science and Method of Politics*, 6-7.

all phenomena, natural or cultural, with doubts and questioning, and with hypotheses in the place of beliefs and rationalizations;<sup>4</sup> that he has some insight into his own rationalization and self-justification processes; that he insists that his students learn to recognize the superficialities of political opinion and authority, to prick the bubbles of dogma (even of professorial dogma), to leave question marks in the gaps in our field of positive knowledge, and to distinguish between political knowledge and political expediency.

One prerequisite attitude, at least, demands closer attention than do the preceding; and, in spite of its being necessary to any scientific approach, it cannot always be presumed that the teacher is equipped with it. This essential is a concept of the utility of political institutions without any concomitant concept of their utility toward any conceived ultimate end or goal of society. In other words, the teacher cannot afford to see any "meaning" or "significance" in political phenomena aside from that of the present serviceability of political institutions and processes to meet actual human needs and to adjust actual claims and interests. To be more explicit, the significance of a thing depends upon the kind and degree of interest which the observer has in it; and this interest, in turn, is an individual, subjective matter. For it is submitted that a purely objective observer—one who would be so entirely abstracted as to have no mundane connections and interests whatever—very likely would find no significance in human society at all. To him, society just is; and where it is going would probably mean little more than that it is on its way. And we have no assurance but that to him man's relationship to other forms of life might not be that of "yahoos" to "houyhnhnms."

Although man, because of the limitations of his biological nature and earthly attachments, is wholly unable to assume this detached, man-in-the-moon character, he does have a distinct point of view which is bound to be anthropocentric—not horse-centric or mouse-centric.<sup>5</sup> From his point of view, the things of the earth serve him and derive their meaning from that service. Hence it is that the only significance or meaning one would dare to inject into things political, since any other significance would be based upon subjective values, would consist of the principle of the serviceability or utility of the political structures, processes, or institutions to the infinitely varied and

<sup>4</sup> A view compatible with that expressed so well by J. H. Robinson in his *The Mind in the Making* seems desirable.

<sup>5</sup> This is stated amusingly by Walter Lippmann in *The Phantom Public*, 32.

kaleidoscopically changing desires of the individuals and groups of individuals composing the units bound together under governmental authority.<sup>6</sup> When a governmental institution ceases to serve those interests, it is ready for demise, and, though it may persist, it does so as a functionless vestigial organ. The essence of the meaning in politics must be grasped as a concept of service for immediate, or at least proximate, ends—not for any individually conceived or interpreted ultimate end. This is a notion of government and of practical politics as institutions actuated by ideas of present expediency—expediency as seen by those persons who either are in authority or are struggling to gain authority. Serviceability, moreover, as will be seen later, is the cementing principle between political functions, processes, structures, and law, since it is the principle that gives them significance.

Now, the function of anything is what it by nature usefully does. Politics or governmental activity is a function—one of the many functions of society<sup>7</sup>—the function by which men regulate (usually with the possible employment of force) their activities with and toward each other as individuals or groups of individuals, or as groups toward the individual and *vice versa*. Government is a function which at its borders blends with many other social functions. What government does constitutes the various functions of government. How government performs its functions is process or procedure. What government performs its functions with constitutes the agencies of government. These agencies may possess the character of either formal or informal structures of the nature of law and custom. The functional study of government is, then, the study of what government does, noting, primarily, how it does it, and secondarily, the structural and legal agencies through which it operates. Functional study is one principally in which the basic attitude emphasizes method, process, and procedure in politics—how it is done.

Laying the emphasis on process rather than on structure does not discard structure; far from it. It merely puts structure in its significant place. For if it is true that, speaking in terms of the universe rather than of man, there is no meaning to our social life except what we put

<sup>6</sup> H. J. Laski, possibly borrowing freely from Duguit, puts it so strongly as to say that government is a great public service corporation, though that term connotes a legalistic concept. *Grammar of Politics*, 69-70.

<sup>7</sup> It is for this reason that the study of government is here looked upon as a branch of sociology, in the broadest use of that term. Cf. Willoughby and Rogers, *Introduction to the Problem of Government*, 1.

into it—if it is true that the only safe meaning we can ascribe to social institutions is one of usefulness for the interests setting them up—it would seem to follow that such institutions are significant or have meaning to us only in relation to their functions. And, since the function of a political institution is to be of service to men or groups of men, and since it therefore affects their interests or desires, it is very important for them to know just how that service is performed. The agencies of these institutions are significant only in so far as they are tools for performance of processes. They derive meaning from the service they give. Structure is not, however, to be looked upon as less important because it derives its significance from process and function. It merely means that the efficiency of the instrument is measured in terms of its function. People are quite indifferent to structure, are relatively indifferent to process, but are keenly alive to the resulting product.<sup>8</sup>

A purely functional approach excludes a number of notions and practices often observed. One of these is in connection with the tendency to advocate "remedies" for ineffective institutions. While there is probably little attempt in university courses to present a purely formalistic content, the usual heavy emphasis on forms and on the law causes the students to put an unwarranted dependence on some such current proposals as city-manager government, parliamentary responsibility, budgetary forms, or proportional representation. One such proposal not yet passing current, but probably fully as valuable as the others from a practical, experimental point of view, is that of a governmental reorganization to allow for "functional representation," as advocated by G. D. H. Cole<sup>9</sup> and by the Webbs,<sup>10</sup> and philosophically explained by Laski. But the functional approach has nothing to do with the advocacy of any such systems of government. It is rather concerned with the study, understanding, and explanation of political activities. Someone might object here that, given the functional course, there would be the same tendency to propose procedural "remedies," e. g., to advocate the exercise of discretionary authority by certain administrative agencies or of rule-making by the judiciary. This is, however, a superficial view. Valuable again as these are for experimentation, emphasis upon them would also be merely an emphasis on the forms of political institutions—this time,

<sup>8</sup> This is put quite forcibly by Laski in his *Grammar of Politics*, 17.

<sup>9</sup> In *Guild Socialism*.

<sup>10</sup> In *A Constitution for the Socialist Commonwealth of Great Britain*.

of procedure. Functional approach demands that all formal aspects of government shall be so taught that the underlying processes—natural, human, and associational—which have thus far gone under the undifferentiating term of politics will be constantly sought for and bit by bit exposed to view. To say that these processes are not yet well known and cannot, therefore, be taught is but to beg the question. They can be approached and taught as theories and hypotheses in the same way that the chemist and the physicist can teach about the behavior of atoms and electrons. This is not merely a matter of good teaching methods. It is a matter of a dynamic attitude which will allow for the full use of a truly scientific study of the naturalistic bases and development of political phenomena and will enable the student to be alert to the obstacles inherent in political studies.

Government, being a function, also has many functions of its own which it performs. These governmental functions are in modern times decidedly varied, and they are probably not capable of complete classification under any one system of heads. Their arrangement would depend entirely upon the immediate purpose of the student making it. Consequently, there is in the functional attitude no postulated number or nature of the functions of government. It would not allow for a statement as to what the function ought to be. It always hunts for the function as it is in order to lay bare the process involved. This means that one must give up any notions he may have as to any "ultimate" form of government, or any "best" procedure, even for particular purposes,<sup>11</sup> for he would have to recognize that the idea of that ultimate was nothing more than an individual mental concept. The moment he admits of any concept of the ultimate, he denies the patent facts of the present and past, that life, biologic and social, is in a state of evolution and has the possibilities of infinite variations. His interest is in observing the character and number of government functions and processes—not in any idea of the legitimate number of those functions.

One must also lay aside some other frequently encountered concepts. The functional approach, in following purely scientific methods, cannot admit the presence of ethical precepts of right or wrong in government.<sup>12</sup> When some political activity is conceived by the observer as wrong, he associates with it a feeling of disapproval, or even of hate,

<sup>11</sup> There might be a most expedient procedure under given conditions, but this would be a matter of applied politics and not of political science.

<sup>12</sup> Walter Lippmann, *A Preface to Politics*, §1-3.



which obscures the real nature of the qualities of the thing observed. While, as a citizen and a fellow-member of society with his student and his neighbor, the instructor cannot afford personally to be callous to the ethical standards of his day, he must, in searching for and presenting political processes, be indifferent to whether the practices he observes are corrupt or pure. To illustrate simply, if a campaign-expenditures act is found to be utterly unworkable in the face of economic forces beyond the control of the politicians concerned, the instructor and student should be able to remove their ethical spectacles in order to investigate the existing phenomenon and see it as it is and not as either of them might think it ought to be. For, if the origin of ethical concepts be social, the facts themselves, if brought to view, will speak admirably as to their own hardihood in the glare of moral sunlight. It is, thus, the duty of the political scientist to observe those practices, whatever they be, to analyze them, and even to attempt to measure the forces and energies involved in such situations of expediency, and to announce to his fellow-men what he has found.

Nor is he to be concerned about what use is made of his discoveries; and it is not his place, as a scientist, to suggest reforms. If his discoveries are of any practical value, and if he has presented them clearly, others who have interests affected will grasp their significance and utilize them. This does not mean that he should not attempt to synthesize his knowledge, but it must be purely for purposes of making new hypotheses with which to stimulate further research and investigation and discovery. Ethical concepts and institutions arise evidently as does government, as practical, utilitarian agencies to meet social needs. Hence, ethical criteria of right and wrong in government are fit subjects for examination in just the same way that governmental processes are, and to inject one into the other during or before the examination in only to obscure the vision.

As with ethical concepts, so with legal concepts of what is lawful or unlawful, legal or extra-legal, constitutional or unconstitutional. The usual over-stressing in descriptive courses of the legal aspects of government induces the student to think largely in terms of formal legal measurement of governmental acts, much as a technical public administrator would do, and to overlook the more important social, psychological nature and origin of the law itself as a political institution. Law, like ethics and government, is a utilitarian instrumentality of society. Having, in common with government, of which it composes a considerable share of the formal part, the same source in social activities and

needs, law cannot measure government—both are measured in terms of social function. Another way of looking at it is that, since government is the principal social agency for creating and enforcing law, it is futile to attempt either to judge or to describe government in terms of the law.<sup>13</sup> This warning is necessary not only in connection with concepts of right and wrong and of legality, but also with concepts of justice and injustice, democracy and tyranny, liberty and the goose step, legitimate and illegitimate ends of government.

Since it is the function of a political scientist to observe political phenomena and to tell what he sees, he is forever asking questions as to the particular characteristics of this mental concept of the state or that mental concept of society, the public, public opinion, and law. He asks especially how these concepts arose in society. He is forever, in his study, challenging the statements of politicians, and even of publicists; for he must get at the motives, forces, and interests involved in political action. A political scientist who has had previous political experience as a ward politician, councilman, or legislator may find himself equipped with the possibilities of a keener insight into political phenomena, but it is open to grave question whether a person can, at the same time while performing his function as a political scientist, engage in political activity without rendering all his own activities and observations fit subjects for critical analysis.<sup>14</sup> His behavior as a political participant becomes subject to the same motive forces and impelling interests as does that of his fellow politicians. He tends unthinkingly to acquire vested interests in the objects he has in view. With his observations subtly colored by such interests, the would-be political scientist could scarcely hope to discover the characteristics of political expediency and be indifferent to the use made of the knowledge gained. The moment he assumed the character of a "good citizen" and tried to put his knowledge into use for the "improvement" of political conditions he would be injecting into his own activities the practical political motives of expediency, and as a teacher he would tend to be a preacher.

<sup>13</sup> Cf. John Chipman Gray, *The Nature and Sources of the Law* (2nd ed.), Ch. IV, and pp. 308-309. M. Duguit states the relation between social function and law thus: "This idea of a social function which both statesmen and political theorists are beginning to place, as they perceive it, at the very root of public law is no more than the idea of public service." *Law in the Modern State*, 39. Cf. also Roscoe Pound, *Introduction to the Philosophy of Law*, 97-98.

<sup>14</sup> This, it would seem, need not necessarily apply to the teacher of practical, professional courses, such as in public administration.

He can scarcely expect to be the star performer and the spectator at the same time.<sup>15</sup>

Teaching of processes with scientific methods in mind, and with exclusion of active political efforts, does not mean that the teacher should not bring to the attention of his students the numerous efforts that are being made to bring about more adequate adjustments (such as model constitutions, legislative reference bureaus, etc.), but he should see to it that he is teaching them as parts of processes that he is observing and not as one who has an *interest* in them. In the present writer's opinion, schools of practical politics cannot arise and function successfully until the real political scientist, devoid of political motives, even of the motive of reform, prepares the way by analyses of motives, forces, and processes. To quote Professor Merriam, "Political science must rest upon a more fundamental basis than 'prudence' or interchange of information or experience."<sup>16</sup> If we are to expect this kind of research and discovery, and if we are to expect any future political inventiveness, students must be trained in that direction from the time they begin their elementary course.

The fact that the political scientist must be content to let others, persons with whom he is not functionally associated, make use of his discoveries, has another very important bearing on his manner of teaching. It can scarcely be his function to teach any brand of "citizenship" or "Americanization" or any any other -ization or -ism. Were he to try it, his inclination would doubtless be to preach those institutions, adjustments, and emotional reactions to which he himself has through life become culturally accustomed. Political life today is the product of traditional activity and expedient adjustments, more or less efficient, among vastly complex and contending social needs, claims, and interests of the present time. And the teacher must expect the future generation, likewise, when it comes into its own, to compound expediency and tradition—but with traditions modified by a greater

<sup>15</sup> The embarrassing disagreements, mentioned by Professor Merriam, among "*prudents*, the professional students of government, and political savants," in their discussions may perhaps be due in part to such an attempted double rôle—mentally, if not actually. *New Aspects of Politics*, 165. The incompatibility of political action and political investigation need not necessarily prevent the political scientist from making practical suggestions as a matter of present expediency, or political *prudence*, as Professor Merriam calls it, provided he takes no part in its adoption and fully recognizes that it can be nothing more than a suggestion for experimentation, and that it may or may not work.

<sup>16</sup> *New Aspects of Politics*, 217.

knowledge of things and processes than is now possible. Students are more in need of knowledge and of methods of procuring more knowledge than they are of present-day interpretations. Since they are to live their own lives, the best service the present political scientist can render them is merely to keep gathering and piecing together the fragments of political knowledge without attempting to determine the future, tempting though such an occupation may be. The politician can do that with his own technique.

The pertinence of this whole matter of functional attitude with its prerequisite intellectual equipment and its resultant limitations upon age-old concepts, and upon pedagogical and political activities of the political scientist, is that it is all a part of a purely scientific technique. For, after all, the essence of science is not only in the fund of knowledge acquired, and of knowledge in such form as to enable prediction of what will happen under given conditions, but it is also in the dynamic process of finding it. The functional attitude is preparatory to the scientific technique of analyzing political effects, whether the effects be in the form of processes or of structure, or even of symbolic conceptions. In the search for the causes of effects, especially effects in the form of processes, one soon finds oneself dealing with potential or active forces in their elementary character. Functional attitude prepares one to search for the relationship of cause and effect. It would make no difference, as far as the process is concerned, if he should find that the cause of a particular effect were in reality a chain, or many chains, of sequential or evolutionary causes, or even a vast network of such sequences. It would merely mean that each such sequence and each factor in the product is a fit subject for further investigation by the same methods, and so on *ad infinitum*. Possibly when students of government get thoroughly in the habit of looking for forces as causes in processes, some one will take the much-needed step of devising some suitable unit of measurement by which the energy and effectiveness of political forces can be calculated.

The constant search for and exposition of political processes, moreover, will keep the mind of the teacher and the student prepared for any contributions which the economists or other social scientists may have to offer through the processes they discover. It is probable that there would develop a greater alertness to the contributions also of the anthropologist, the bio-chemist, and especially the psychologist. It may be possible, for instance, that present tendencies in psychological research will give us keys to social processes and measurement through an

understanding of behavior, and the student should be previously prepared to evaluate for politics any such contributions when they come. It seems that an emphasis on functions, processes, and forces ultimately cannot fail to link up our knowledge of political life with that of the rest of the more material forces and energies of the universe—this even though the material side may not tell the whole story.

Much of the future of political science, as distinct from other and closely related fields, rests, it seems, with the kind of courses offered to undergraduates. The key problem is that of the arrangement of the content, and that, above all, of the attitude taken, in the introductory course. The usual and traditional course in political science, whether introductory or advanced,<sup>17</sup> is the structural or so-called descriptive course. The structure of government and the laws maintaining that structure form the bulk of the course—so much of it, in fact, that students tend to emerge with little more than a static concept and the feeling that the yardstick for the measurement of government is a hybrid of relatively transitory law and ethics of the day. As has been pointed out, both the structure and the law are utilitarian agencies of society and cannot, therefore, except superficially, be studied in terms of each other. There has been some attempt to make it more dynamic by introducing accounts of the legal procedure, but this has not explained to the student how government works—especially how practical politics works. He too often sees great discrepancies between the supposed legal procedure and what actually happens. Any introductory course in this field, if it covers enough ground to prepare the student for advanced study, must necessarily be mainly descriptive for the student. But it would be more effective if it described functions and actual processes primarily, and described structure and law as the servants which aid or hinder the processes of political adjustment and of maintaining approximate equilibrium of human desires and interests.

It probably makes little difference whether the introductory course presents for its substance American government or comparative government; the basic assumption must be the same. This assumption, if it really is no more than an assumption, is that human beings, having,

<sup>17</sup> One rather serious pedagogical difficulty with the descriptive course is that it is susceptible to only a slight gradation in intellectual difficulty for advanced students. While the more difficult courses usually require memorizing of a greater amount of structural and legal description, too often the student is not required to demonstrate any increased power of detecting significant processes and relationships.

in general, like biological characteristics, have also like needs and fundamentally behave much alike, developing in their social life claims and obligations resulting in very like, if not identical, political behavior. It assumes that the underlying political forces are much the same in England, Russia, and the United States; that a Lloyd George or a Woodrow Wilson attains political dominance by very similar tactics; that the difference in outward processes are not so much in kind as in the degree of complexity of the interests involved and the instrumentalities of structure and law devised to perform them.

It does not seem to make much difference whether the course has the student begin with a survey of the social activities out of which governmental functions emerge and then work toward the functions bordering on other social fields. Possibly the former would be too slow for the purposes of an introductory course, especially when the student can be directed to collateral courses in sociology, economics, and history. This is a matter, however, of individual pedagogical technique for the teacher, or one of mere interest or attraction to the student. Functional approach, again, is more than a matter of good teaching.

Processes can, perhaps, be adequately presented in American government by studying separately, for example, and as is commonly done, the various units of governmental authority—national, state, and local. But it would be more in consonance with the functional attitude to take up first a brief account of some general phases of political processes, possibly political leadership and following, and then trace each function. The function of law-making, for example, could be carried through all the governmental units, branches, and devices, explaining the formal and, in so far as they are available, the informal processes involved. The making of law is a social process. In order to understand it, the student is required to examine the forces and processes which create constitutional, statutory, and common law and the qualities which give these the character of law.<sup>18</sup> To be more specific, the study of statute law alone would involve its substantial informal preparation and its proposal by interests desiring it, the formal process of enactment, together with its background of informal struggle (in the lobby, etc.), whether in a city council, a state legislature, or in Congress. It would involve an account of administrative elaboration and adaptation, and even judicial determination of its nature,<sup>19</sup> including the mental process-

<sup>18</sup> F. H. Allport, "The Psychological Nature of Political Structure," *American Political Science Review*, XXI, 612-614.

<sup>19</sup> Cf. J. C. Gray, *Nature and Sources of the Law*, Ch. IV.

es of the judges.<sup>20</sup> Some account, also, would have to be given of the lack of and the need for effective criteria of the relative expediency of proposed legislation, and the relative efficiency of statutes already on the books. Finally, it would demand an examination of the processes by which laws are altered and become extinct, whether by amendment, substitution, lack of enforcement, failure of convictions, interpretation, or repeal. Thus would the student see law-making as a great social function carried out by many specialized processes and agencies. The structure and composition of the legislative bodies and of the constitutional conventions would, of necessity, have to be described, but they would assume their natural rôle of instrumentalities. Pedagogically, such a course need be neither inductive nor deductive in method—it seems bound to be explanatory in order to save time.

After all, the end desired in an introductory course appears to be one of attitude, combined with an adequate accumulation of relevant knowledge. That attitude involves a concept which envisages government as an evolutionary product; as a product of the struggle between various kinds of human interests, forces, and drives; as a product for today's consumption and not intended for all time. It would call for an idea of structure and law, no matter how fundamental, as agencies for political service, and therefore subject to change with or without notice. Although, for some time to come, the course will contain far more of structure than of processes, the emphasis and the attitude of the functional approach would, it is submitted, tend to instill an expectation of new discoveries to fill in the admitted lacunae in our knowledge, and would instill, therefore, a readiness to accept contributions from related disciplines. In other words, the end is to imbue the student with a dynamic rather than a static concept, or, as some one has termed it, "insight."

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<sup>20</sup> Cf. B. N. Cardozo, *The Nature of the Judicial Process*, Lect. IV.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

The headquarters of the American Political Science Association at the Chicago meeting December 27-29 will be the Stevens Hotel, and all round-table sessions, as well as the general sessions, will be held there. The same hotel will be the headquarters of other organizations meeting in Chicago at the same time, including the American Economic Association, the American Statistical Association, the American Association for Labor Legislation, and the Association of American Law Schools. Members are advised to make reservations early. As in previous years, the round tables, meeting on the forenoons of three days, will be a principal feature of the program. In order that the discussions may be planned for in advance, it is suggested that members communicate at once with the chairman of the round table in which they wish to participate. The following round tables (with director in each case) have been arranged: (1) Personnel, Mr. Fred Telford, Bureau of Public Personnel Administration, Washington, D. C.; (2) Administrative law, Professor John Dickinson, Princeton University; (3) Administration of foreign offices, Dr. Raymond L. Buell, Foreign Policy Association; (4) Imperialism as a factor in post-war politics, Professor Parker T. Moon, Columbia University; (5) Comparative party politics, Professor John M. Gaus, University of Wisconsin; (6) Teaching of government, Professor O. Garfield Jones, University of Toledo; and (7) Political corruption, Professor Peter H. Odegard, Williams College. There will also be a round table on municipal government and one on statutes. The latter will be participated in by members both of the American Political Science Association and of the Association of American Law Schools. On the 27th there will be a luncheon, with a talk by Dr. Charles A. Beard on "The Constitutional Crisis in Jugoslavia," and at the afternoon session there will be papers by Professor Frederick A. Cleveland, of Boston University, on "The American Conception of Sovereignty and its Practical Applications;" Mr. P. G. Agnew, secretary of the American Engineering Standards Committee, on "Political Incidence of Standardization in Industry"; Professor T. V. Smith, of the University of Chicago, on "Political Equalitarianism and Democracy." In the evening there



will be a joint meeting with the American Economic Association at which the presidential addresses will be delivered. On the 28th there will be a luncheon at which reports will be made by the Association's committee on policy and also one of its representatives on the Social Science Research Council. The afternoon program will be devoted to a consideration of problems of local government. Mr. Walter Millard, of the National Municipal League, will speak on city-county consolidation and the county manager, and Professor Ivan Pollock, of the State University of Iowa, on the subject of state supervision of local finances. The annual business meeting of the Association will take place at four o'clock on the same day, and it is planned to hold an open meeting in the evening to hear addresses of notable speakers. The Association will join in a luncheon with the Association of American Law Schools on the 29th. The concluding program that afternoon will bring discussion of the following subjects: "Congressional Control of Foreign Policies," by Professor Harold M. Vinacke, of the University of Cincinnati; "Campaign Expenditures," by Professor Edward M. Sait, of Pomona College; and "The Proletarian Parties of Japan," by Professor Kenneth Colegrove, of Northwestern University.

The chairman of the committee on local arrangements is Professor Kenneth Colegrove, of Northwestern University; the chairman of the committee on program is Professor S. Gale Lowrie, of the University of Cincinnati; and a committee to nominate officers for 1929 has been appointed consisting of Dean Isidor Loeb, of Washington University (St. Louis), chairman, and Professors Clyde L. King, Frank G. Bates, Graham H. Stuart, and Frederick A. Middlebush. Members are invited to send suggestions to any of these committees.

Dr. Richard C. Spencer, formerly at the University of Illinois, is now assistant professor of political science at Western Reserve University.

Mr. Hiram H. Stout, recently a student of political science at Oxford, has been appointed instructor at DePauw University.

Dr. Claudius O. Johnson, formerly of the University of Chattanooga, is now professor of political science and head of the department of history and political science at the State College of Washington.

Dr. Waldo Schumacher, recently appointed professor of government at the University of Oregon, has been made chairman of the

group in charge of the newly established freshman survey course in the social sciences.

Mr. H. A. Alderfer, of Syracuse University, has become assistant professor of political science at Pennsylvania State College.

Professor Jacob Tanger is on leave of absence from Pennsylvania State College during the first semester and is travelling in Europe.

Dr. James Hart, of the Johns Hopkins University, served as the official representative of the American Political Science Association at the Institute of Public Affairs held at the University of Virginia in August.

Mr. Carl L. Heyerdahl, graduate student in political science at the University of Wisconsin, has been appointed instructor in history and political science at Purdue University.

Professor A. B. Butts, of the Mississippi Agricultural and Mechanical College, was admitted to the bar in Mississippi last February. He spent the past summer at the Yale Law School. Mr. Will J. Evans has been appointed instructor in political science in the Agricultural and Mechanical College.

Dr. Claude A. Buss, of the University of Pennsylvania, recently a Carnegie fellow in international law, has been appointed instructor in political science at Grove City College.

Mr. David W. Wainhouse, of Oxford University, holds a Penfield travelling scholarship in international law from the University of Pennsylvania and is completing a study of visit and search in international law. Mr. William C. White, reappointed to a Penfield scholarship, is in Moscow studying the new Russian constitutional system.

Professor Carl Brinkmann, of the University of Heidelberg, is engaged in the study of civic education in the United States, making his headquarters at the University of Chicago. This inquiry is part of a series of studies in comparative civic education, publication of which is expected to begin shortly.

Dr. Royden J. Dangerfield, formerly a graduate student at the University of Chicago, is now assistant professor of political science at the University of Oklahoma. Dr. L. Vaughn has a similar position at the College of William and Mary, and Dr. Harwood L. Childs is professor of political science at Bucknell University.

Professor Frank M. Stewart, associate professor of government at the University of Texas, has been given leave of absence for the first semester of the present academic year to conduct a study of highway administration in Texas. He is working under a grant from the Laura Spelman Rockefeller Memorial Foundation, which has set aside a fund for research in the social sciences in the Southwest.

Mr. Jerome L. LeMaster, formerly at the University of Illinois, has joined the political science staff at Oregon State College with the rank of assistant professor. Messrs. Merritt M. Chambers and Wilbur P. Riddlesbarger have been promoted to assistant professorships in the same department. Dr. Roy M. Lockenour, until recently assistant professor of political science at Oregon State College, has accepted appointment as professor of law at Willamette University, Salem, Oregon.

The following changes in personnel have been made in the political science department at Dartmouth College: Mr. David M. Amacker has returned after a year spent in teaching at the Louisiana Polytechnic Institute, and Mr. Milton V. Smith after a year spent in study at the University of California; Dr. Luther H. Evans, formerly of New York University, has been appointed instructor; and Mr. Edward F. Dow has resigned to continue his graduate work at Harvard.

Mr. Bruce Smith, of the National Institute of Public Administration, went to Europe at the end of August to study methods of collecting criminal statistics in European countries, in connection with his work for the Committee on Uniform Crime Records of the International Association of Chiefs of Police. Mr. Donald Stone, formerly of the Cincinnati Bureau of Municipal Research, has joined Mr. Smith's staff in New York, and will be associated with him in the preparation of his report on uniform crime records.

At the State University of Iowa, Dr. Kirk H. Porter has been promoted from associate professor to full professor of political science; Dr. Herman H. Trachsel, from instructor to associate; and Dr. Dorothy Shaffter, from assistant to instructor. Dr. Trachsel is making an intensive study of the operation of public utilities in Iowa.

At New York University Dr. Rinehart J. Swenson has been advanced from associate to full professor of government; Dr. Luther B. Evans has resigned to accept an instructorship at Dartmouth; and Mr.

George K. Reiblich has been appointed instructor and Mr. Ralph Seward assistant instructor. Professor Rufus D. Smith, chairman of the department, has been raised from assistant to associate dean.

The annual meeting of the New York Academy of Political Science, to be held November 23, will deal with the general subject of the preservation of peace, with sessions devoted specifically to "The Renunciation of War as an Instrument of National Policy," "New Uses for the Machinery for the Settlement of International Disputes," and "The Case for the Pact."

The National Municipal League has appointed a committee on the teaching of municipal government in colleges and universities, under the chairmanship of Professor William Anderson, of the University of Minnesota. The following are the members of the preliminary committee, which may later be increased in number: William Anderson, chairman; Charles A. Beard, H. S. Buttenheim, Edwin A. Cottrell, H. W. Dodds, John A. Fairlie, Luther Gulick, A. C. Hanford, O. Garfield Jones, Arthur E. Morgan, W. E. Mosher, W. B. Munro, Thomas H. Reed, C. E. Ridley, and Russell Forbes. As a first step, the committee is planning to formulate a statement of the objectives of college and university courses in the field of municipal government.

The law faculty of the University of Leyden announces a prize of 5,000 Dutch guilders for the best essay submitted to the dean of the faculty on or before May 1, 1930, on "the conditions in which the acts of a state may be considered by another state as unlawful on the ground that they are in conflict with fundamental principles of private law, including private international law, and the manner in which the damage caused by such wrongful acts is to be repaired."

At the Hanover Conference of the Social Science Research Council held in August it was decided that the first issue of *Social Science Abstracts* should appear in March, 1929. Only articles in periodicals will be abstracted in 1929; books, monographs, and serials will not be included until the second year. It is estimated that about 15,000 articles will be abstracted the first year. From these beginnings, *Social Science Abstracts* will work toward inclusiveness. The yearly subscription rate has been fixed at \$6.00, including annual indexes. Subscriptions and other communications may be sent to the Editor, 611 Fayerweather Hall, Columbia University, New York City.

The National Municipal League met jointly with the Governmental Research Conference and the National Association of Civic Secretaries at Cincinnati on October 16-17. Among other features was a report from the National Committee on Municipal Standards, presented by the secretary, Mr. Clarence E. Ridley. Addresses were given by Dr. Charles A. Beard, on the city's place in civilization; Professor Joseph P. Harris, on the practical workings of proportional representation in American cities; Professors Wylie Kirkpatrick, Herman C. Beyle, and others, on "selling the work of government to the people;" and Messrs. John Ihlder, Bleecker Marquette, and others, on the city government's responsibility in housing. A comparison of certain municipal administrative practices in Great Britain and the United States, by Mr. Arthur Collins, financial adviser to local authorities in England, was the leading feature of a luncheon meeting.

Yale University has received a gift of \$350,000 from Mr. and Mrs. Philip B. Stewart, of Santa Barbara, Calif., Mr. Alfred Cowles, of Chicago, Ill., and Mr. and Mrs. William H. Cowles, of Spokane, Wash., to establish the Alfred Cowles Foundation for the Study of Government. "This generous and timely gift," comments President Angell, "will enable Yale to proceed at once with plans for the promotion of the study of those phases of American government which are of chief practical importance to the citizen. At present the College offers a considerable group of courses in the field of government dealing with theoretical and descriptive branches of the subject. Though the work now offered is substantially equivalent in scope to that of other liberal arts colleges, need has long been felt for further development of study along lines which offer the student the largest opportunities for usefulness in the political life of his community. The Cowles Foundation now makes this possible. A part of the income will be used to equip the University with a comprehensive collection of materials relating especially to the practical problems of state and municipal governments and the activities of political parties and the electorate. Another part will make possible a series of courses to provide historical background of government, and to utilize these materials under the direction of a distinguished teacher soon to be added to the faculty. Graduate work will be promoted by offering generous fellowships to selected students of Yale and other universities; and efforts will be made to stimulate intensive study of political problems by undergraduates through honors courses open to students of high rank."

**The Williamstown Institute of Politics.** The eighth annual session of the Institute of Politics was held in Williamstown August 2-30. Attention this year was turned more generally than ever before in non-European directions, indicating, probably unintentionally, the relative indifference of Americans to affairs not directly of American concern. Only three of the leaders this year concerned themselves with matters European. Count Carlo Sforza, former Italian minister for foreign affairs, conducted a general conference on "Problems of Peace in Europe," and gave a lecture on "The Responsibilities for the World War: Personal Recollections." In general, his outlook was optimistic for the continuation of peaceful conditions, despite the Polish corridor and the question of Austro-German union. He contended that the revisionist efforts to exonerate the Central Powers were not calculated to help the cause of democracy in Germany. Immediate responsibility for the war he laid on the Austrian autocracy, and general responsibility on the European system of equilibrium in 1914. Dr. Louis Pierard, head of the Belgian Labor party, gave a course of lectures on "Current Political Problems in Belgium," which dealt largely with conditions among the workers; and Dr. Otto Hoetzsch, of the University of Berlin, member of the Reichstag, gave a similar course on "Germany's Foreign and Domestic Policies."

The rest of the program provided a consideration of large ideas and basic facts combined with present-day policies and current events. The approaching presidential election increased the interest in the questions of political psychology and method, in the farm problem, in the Nicaraguan question, and in the Kellogg multilateral treaties. At the same time, the general subject of economic imperialism, and the clash or accommodation of widely different civilizations in Latin America, Asia Minor, Africa, and the Far East, came up for extensive discussion.

Under the leadership of Professor Graham Wallas, of the London School of Economics, a round table was conducted on "Methods of Social Direction," supplemented by three lectures on the same subject. In these Professor Wallas emphasized the "new social dimensions" produced by modern science and industry, and the necessity of bringing under the deliberate control of human reason the social problems hitherto left to chance. He urged the abandonment of eighteenth-century notions of natural right and divine providence, and the development of trust on the part of the voter toward his representative, coupled with a sense of responsibility by the latter and his

non-political expert advisers. To function under modern conditions, democracy must learn how to utilize scientific knowledge, how to choose experts. The objective, rational, scientific approach to current problems is essential. Intensified thinking in political life must be developed and combined with creative imagination. Unfortunately, as Professor Wallas was beginning to discuss concrete political mechanisms he was suddenly recalled to London and the meetings were discontinued.

"Agriculture and the Agricultural Surplus: an International Approach" was the topic considered in a round table directed by Professor C. R. Fay, of the University of Toronto. His theme was, in the main, that agriculture must attend to its own salvation, through organizing coöperative marketing associations large enough to reach the terminal markets. The Canadian wheat pool, the California fruit growers' exchange, and the new livestock commission agencies were described as examples of successful coöperation in America. The McNary-Haugen bill was analyzed and criticized unfavorably, and reserved comment was made on the proposals put forth by Hoover and Smith in their acceptance speeches. Professor Fay remarked "that both parties have seriously underestimated the power of coöperative organization as a force slowly to pull around the agricultural situation. People do not seem to be aware of the dynamic work that coöperatives are doing in this country."

The relations of the United States with Latin America were considered this year more extensively than ever, being taken up in their political, economic, and legal aspects in three round tables. Professor Charles W. Hackett, of the University of Texas, in a round table entitled "Recent Inter-American Relations and Problems," gave consideration to events in respect to Mexico, Nicaragua, and the Havana Conference. The conduct of negotiations with Mexico by the State Department was criticized for resorting to diplomatic pressure before an appeal to the Mexican courts had been made. It is perhaps significant that the representative of the oil companies expressed dissatisfaction with the present diplomatic settlement. Dealings with Nicaragua were called bungling, vacillating, and inconsistent. It was assumed that the canal rights secured under the Bryan-Chamorro treaty were at the bottom of our intervention there. It was alleged that the Coolidge-Hughes doctrine of intervention was an open repudiation of the Pan-Americanism advocated by Blaine and Wilson.

"Inter-American Economic and Commercial Relations" were discussed under the leadership of Professor Harry T. Collings, of the University of Pennsylvania. With political considerations in the background, and with mutual economic needs to the fore, the relations of the United States with Latin America appeared to be much more satisfactory. The growing need for Latin American products by the United States was emphasized. In regard to imperialism in the Caribbean, it was asserted that American policies are natural and inevitable; that, despite mistakes, they have been carried out with moderation and forbearance in the face of difficulties and provocations, and that they compare favorably with the policies of other nations.

Legal questions came up in the round table on the "Protection of Citizens Abroad," led by Professor Edwin M. Borchard, of Yale University. He stressed the obligation of citizens to submit abroad to the local law and local courts until they have actually suffered injury through denial of justice. He regretted President Coolidge's recent allusion to American property abroad as part of the national domain, because such an assertion is "capable of misrepresentation." He pointed out the inability of our own government in some circumstances to protect aliens in this country. He made clear the way in which individual claims can be influenced in their settlement by policy rather than right and law. He particularly advocated an international court of claims to which individuals could appeal as of right, with or without the support of their government, against a foreign government. In a special conference Professor Borchard also discussed the Kellogg treaties outlawing war, contending that the reservations advanced by France and Great Britain actually sanction every readily conceivable war. Considerable disagreement with this interpretation as too legalistic, and as ignoring the psychological factors in the situation and the force of public opinion, was expressed by other members of the conference.

Most of the rest of the program dealt with the clash of Western culture and imperialism with Eastern nationalism in Asia. The successful struggle of an Asiatic people against the West was described, both in lectures and in a round table, by Halide Edib Hanum, the exiled Turkish feminist and nationalist, who took up "Modern Turkey and its Problems." She particularly emphasized the background of the modernization of Turkey, showing in what respects it is not a recent or sudden development. She also considered the emancipation of Turkish women, the secularization of the Turkish state, and the ways



in which the problem of non-Turkish nationalities has been advanced toward a solution.

Some of the more fundamental aspects of the clash of cultures were taken up by Professor R. D. McKenzie, of the University of Washington, in his round table on "Population Problems on the Pacific Rim." This was one of the most illuminating discussions of the session. It was here demonstrated that economically the Pacific area is a cooperating rather than competing unit. The idea that the Occidental peoples are essentially superior to Orientals was combatted. The working of economic forces to form regional interrelationships among the Pacific regions was emphasized, and the effect of industrial development was considered. It was shown that Orientals really migrate very little, and that emigration is no solution for Japan's population problem. The relations of population movement and so-called "exploitation" of native peoples to economic progress were considered objectively and optimistically, and the ways in which race prejudice has clouded certain issues were made clear. In regard to the alleged more rapid breeding among Orientals, the leader asserted that fears based on this idea are groundless, declaring that the process of urbanization, education, and the rising standard of living which comes with the spread of industrialization will decrease the birth-rate among Orientals as it has among Occidentals. The difficulties, he said, arise more from cultural than from racial differences, and many even of the former are being levelled through economic contacts. On the other hand, he made clear that population control by government action can be justified, and is becoming more general. He advocated that such policies be approached scientifically and with international good-will.

Political events were taken up in Professor George H. Blakeslee's round table on "Problems of the Pacific," and discussion there was supplemented by two lectures by Dr. C. C. Wu on "The Domestic Program of the Kuomintang" and "The Foreign Program of the Kuomintang," and by a lecture on "The Task of Educating China's Millions for Citizenship" delivered by Dr. Y. C. James Yen. The cultural phases of the Chinese revolution were brought out, as well as the political. Most of the discussion, however, centered upon Sino-Japanese relations and the question of Manchuria. This quickly resolved itself into a clash between "rights" and "vested interests." While it was made clear that neither China nor Japan wants to fight, it became equally clear that no immediate accommodation seems likely. If enough time can pass for popular feeling to cool, it seems probable

that, with the growth in China of really effective government, Japan's vital economic interests can be safeguarded without impairing China's sovereignty.

Four special open conferences on "The Problems of Africa" were conducted at the end of the session by Dr. Raymond L. Buell, of the Foreign Policy Association. These were notable for Dr. Buell's indictment of recent actions by the Firestone Company and the United States Department of State in Liberia. His assertions were vigorously combatted on the spot by Dr. T. Jesse Jones, of the Phelps-Stokes Foundation, and in the public press by the State Department, the President of Liberia, and the Firestone Company.<sup>1</sup>

At the close of the session President Garfield, chairman of the Institute, announced that continued financial support had been provided, and that, pending the working out of plans for permanent endowment, the program for next year will be substantially as heretofore. He intimated that some suggestion had been made that the various institutes now in existence coördinate their efforts in bringing speakers from abroad. The feasibility of this suggestion is being studied.

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**Reapportionment in California.** One of the most perplexing problems facing California today is that of legislative reapportionment. The present constitution provides (Art. IV, Sect. 6) that the state shall be divided into forty senatorial districts and eighty assembly districts "as nearly equal in population as may be and composed of contiguous territory," and that every ten years the legislature, at its first regular session after each national census, shall adjust such districts and reapportion the representation. In other words, the constitution of 1879 makes it mandatory for the legislature to redistrict the state after each federal census. During the past twenty years, however, proper adjustment of legislative representation has been so difficult a problem that the state is still districted on the basis of the 1910 census. The magnitude of the problem is explained partly by the sectional diversities of the state, and partly by the growth of city populations, with the resultant fear in the rural sections of urban domination.

Throughout its history California has been the scene of keen sectional rivalry, and each general state election and each legislative

<sup>1</sup> See pp. 999-1004 below.

session serves but to emphasize this sectional feeling between the northern and the southern parts of the state. At the last election the feeling ran so high as to threaten disruption, and one heard again the burning threats of secession. Southern California is strongly Republican, while northern California sometimes goes Democratic. Southern California opposes legalized horse-racing and legalized gambling on horse races according to what is called "pari-mutuel" wagering, while northern California votes favorably to these practices. Southern California opposes the repeal of the Wright Act, which provides for the enforcement of the Eighteenth Amendment, while northern California favors its repeal. Los Angeles and San Francisco are rivals commercially as well as politically.

The shifting of population that has come with the growth of cities, and especially the unprecedented development of Los Angeles and San Francisco, has intensified sectional differences and thus aggravated the whole problem of reapportionment, until today, if representation were reapportioned according to the constitutional provision of 1879, the political power of the state would be concentrated in the inhabitants of three per cent of the state's area. For today more than one-half of the total population is contained within the counties of Los Angeles, San Francisco, and Alameda. As a result, many feel that the constitutional provision written in 1879, when the concentration of sixty or seventy per cent of the total population of the state in three per cent of its area was not contemplated as a possibility, is no longer applicable; and that population should no longer be the sole basis of representation, but rather some sort of combination of population and territory. The legislature has repeatedly refused to reapportion according to the constitutional provision, since to do so would place a few centers of population in complete control of the process of law-making. Three successive sessions following the 1920 census were deadlocked between conflicting opinions on representation, and every proposal failed.

At the general state election of November 2, 1926, the ballot contained two initiative measures dealing with reapportionment. Proposition Number 20 would have added a section to Article IV of the constitution providing for a reapportionment commission composed of the secretary of state, the attorney-general, and the surveyor-general. Should the legislature fail at the first session after a census to adjust senatorial and assembly districts, the commission was to reapportion

the state; and if the commission should fail to act, the supreme court was to have power by writ of mandamus to compel action.

Proposition Number 28 is commonly spoken of as the "federal plan," because its provisions resemble those of the federal Constitution with respect to representation in the national legislature. The measure would preserve to rural California the control of the senate, while urban California would dominate the assembly. Under this plan the legislature would, following each census, divide the state "into forty senatorial and eighty assembly districts comprising contiguous territory, with assembly districts as equal in population as possible, and no county or city and county containing more than one senatorial district, and no senatorial district comprising more than three counties of small population." It, too, provided for the creation of a reapportionment commission, consisting of the lieutenant-governor, attorney-general, surveyor-general, secretary of state, and superintendent of public instruction, to make reapportionment if the legislature should fail to act. There are fifty-eight counties in the state and forty senators. Under this amendment, the larger counties would each be given one senator; the smaller counties would be grouped; but there would be at least one senator to each three counties. As to how the senatorial districts should be formed, the amendment made no further provision.

The far-reaching effect of these propositions may be illustrated by Los Angeles county, which now has fifteen assemblymen and eight senators. If reapportioned according to population, as provided in the first plan, it would have twenty-one (plus) assemblymen and ten (plus) senators—in other words, one-fourth of the voting strength in both houses. If reapportioned on the basis of the federal plan, it would have twenty-one (plus) assemblymen but only one senator. Or again, take Alameda, Los Angeles, and San Francisco counties, which combined have 200,000 more than half of the population of the state. Reapportioned on the basis of population, they would dominate both houses; but if reapportioned according to the federal plan, they would have only three of the forty senators.

As a result of the state election, the federal plan was adopted by 64,000 majority. However, more than 300,000 voters failed to vote on the question; and though the legislature of 1927 redistricted the state in accordance with the plan (Stats. 1927, ch. 856), a referendum petition prevented the scheme from going into operation unless again adopted by the voters in 1928. For, in July, 1927, Secretary Jordan announced that 77,425 valid signatures had been filed in his office

to refer the plan to the electors, whereas only 57,206 signatures were required. Acting for the farm bureaus and other organizations, and contending that many signatures on the petition had been obtained "fraudulently and illegally," Senator Frank S. Boggs, of Stockton, author of the redistricting law, filed a mandamus suit against the secretary of state to prevent him from certifying as to the sufficiency of the petitions. On May 21, 1928, however, the state supreme court denied the petition; and hence, for a second time, the voters were called upon, at the current November election, to pass upon the question.

Twenty-nine states have already definitely provided against the possibility of virtual disfranchisement of any portion of their area, by setting up a balanced legislature which neither city nor county can dominate. California's decision, under the circumstances described above, has been awaited with an interest not confined to her own bounds.

FRANCES N. AHL.

*Glendale, Cal.*

## BOOK REVIEWS

EDITED BY A. C. HANFORD

*Harvard University*

*Administrative Powers over Persons and Property; a Comparative Survey.*

By ERNST FREUND. (Chicago: University of Chicago Press. Pp. xxi, 620.)

*Legislative Functions of National Administrative Authorities.* By JOHN

PRESTON COMER. (New York: Columbia University Press. 1927. Pp. 274.)

The series of important books which have recently appeared on various aspects of administration and administrative law fitly culminates in Professor Freund's long expected treatise, published under the auspices of the Commonwealth Fund as a result of an investigation undertaken as chairman of the special committee on administrative law appointed by the Legal Research Committee of that foundation. In most previous books and articles the administrative regulation of private rights has been approached from the angle of judicial review, i.e., of the scope of control exercised by the courts to revise and correct administrative acts. Professor Freund strikes into a long-needed and much more fundamental line of approach. Studies of judicial review are bound to be superficial unless based on adequate analysis of what it is that is judicially reviewed—in other words, an analysis of the nature and distinguishing characteristics of the many different types of administrative action. This essential analysis Professor Freund has performed on an exhaustive and definitive scale. Under our legal system, as he points out, administrative action is practically always a child of statutory creation. Hence, to analyze the different types of administrative action means in substance to classify the various powers conferred by statutes on administrative agencies. What Professor Freund has given us is, therefore, a book of statutory analysis, having a novel and unusual appearance in comparison with the familiar type of legal treatise which proceeds by analysis of cases from the law reports. Here the cases (although more than four hundred are cited) appear as only incidental to the attempt to bring out uniformities and distinctions in the statutory materials.

Professor Freund's method is one of rigorously elaborate classification, resulting in important exclusions from the field of administrative activity selected for treatment. Thus he excludes all administrative powers exercised merely by way of preparing for judicial proceedings or of carrying out judicial mandates, as the powers of service of process, arrest, and execution vested in sheriffs; and similar exclusion applies to administrative powers of purely abstract fact-finding character, such as the authority of the Interstate Commerce Commission to value the railroads. Rule-making powers, or powers of delegated legislation, are also excluded from the general treatment, although one of the most suggestive chapters in the book (Chapter XI) summarizes most of what can be said about this important type of administrative activity. There are thus left for detailed discussion only what Professor Freund calls "determinative" or "ruling" powers, i.e., those which impinge directly on individuals in specific instances, or "from case to case," and produce an immediate effect on the legal rights or status of the individual thus touched. But even from this field important exclusions are made, as of powers exercised inside the governmental organization, such as those connected with appointments, promotions, and removals of public employees. Finally, all administrative determinations made in performing the "service" functions of government are excluded, i.e., all those in the field of public land and pension administration, the postal service, and the supply of water, transportation, and the like. The powers thus left for treatment are those in aid of revenue legislation and police regulation, including the regulation of business in the public interest.

Thus limited in scope, the book falls into two almost equal parts. The second half consists of a summary of statutory provisions which supply the basis for the generalizations presented in the first, or "analytical," part. This statutory material is drawn from the enactments of four jurisdictions—the United States federal government, the state of New York, Great Britain, and Germany—chosen as representative of four different types of administrative organization described in Chapter III. The appropriate statutory material for all four jurisdictions is grouped under each of the following headings: public utilities, merchant shipping, banking, insurance, trade, labor, control of professions, religion, education, political action, safety, health, morals, personal status, use of land, and revenue. This sum-

mary contains a mine of details which should interest students of other than purely administrative questions.

The key to the analytical part of Professor Freund's treatment is apparently the distinction which he draws between "enabling" and "directing" powers. An instance of the first are powers to issue or withhold licenses and permits, while the second is exemplified by administrative orders requiring persons to take or desist from specified action, e.g., the English closing orders against unsanitary dwellings and most of the orders of the Interstate Commerce Commission. Perhaps the most valuable parts of the treatise are the suggestions and comments of a practical character on such subjects as the duration of licenses, the desirability of a hearing before the refusal of a license, the administrative imposition of terms and conditions in connection with granting licenses, and the whole matter of the revocation of licenses. Professor Freund's chief contributions are made as a constructive critic of the statutory policy involved in selecting the form and defining the scope of particular administrative powers designed to effectuate a given result. It is to be regretted that he has not allotted more space to the operation in practice of the novel "variation" provisions of zoning laws and ordinances permitting the administrative authorities to suspend or modify general rules in favor of specific pieces of property.

The central standpoint from which Professor Freund considers the differences between enabling and directing powers is their bearing on the problem of administrative discretion. A chapter (Chapter VI) is devoted to analyzing different degrees of discretion—prudential, mediating, censorial, technical, unqualified, etc. To such discretion in general Professor Freund is not favorable. "The more carefully legislation is worked out, the more marked are the provisions for circumscribing discretion" (p. 70). "If it be asked whether in the exercise of this control [over rates] discretion is preferable to rule, there can be little doubt that this answer should be in the negative" (p. 98). "The function of discretion should be not to displace rule, but to prepare the way for it. On any other terms administrative discretion would be an anomaly. It would mean that administrative authorities are superior to courts in their capacity to deal with private rights, or that under modern conditions the public welfare demands personal government instead of government by law" (p. 102). This attitude seems to proceed from two convictions: on the one hand, Professor Freund apparently believes that discretion as a "political" function should be



properly confined to the legislature (pp. 84, 101); secondly, he apparently has confidence that it is possible in the course of time to develop a rule adapted to practically all of the matters which are proper subjects for administrative regulation. Resort to discretion "appears to have been due to a perception of abuses without a corresponding perception of remedies" (p. 80). "The history of rate-making in England and the United States hardly makes a good showing for the practicability of a mediating administrative discretion; a mere standard of reasonableness will not in the long run be a satisfactory basis for a delegated power to determine the value of services rendered. There seems to be a strong tendency toward replacing this standard by more definite criteria" (p. 84).

From the standpoint of the relative amount of discretion required, Professor Freund apparently favors the use of enabling, as contrasted with directing, powers. "I believe," he writes, "that on the whole there is a trend toward the reduction of discretion in the grant of licensing powers." In view of the permit requirements of the Transportation Act of 1920, this impression is, of course, open to question. However, "the impression of a tendency toward non-discretion rests upon the unmistakable progress toward statutory standardization. Divested of discretion, a system of advance checks is consistent with placing private right entirely on the basis of direct statutory requirement" (pp. 581-582). "It is possible to eliminate discretion from the grant of a license entirely, and enabling powers tend toward routine administration, whereas a directing power is rarely devoid of discretion" (p. 63). "The fact that America and England have adopted the directing power but tardily, and apparently with reluctance, raises the question whether it has a permanent and legitimate place in the legal system" (p. 173).

It seems clear, however, that many of the objects sought to be accomplished by resort to directing powers are either incapable of accomplishment by such an "advance check" as a license, or else that the substitution of the latter for the former method of control in cases where it might be found possible would often mean only a change of form and not of substance. Thus the mere substitution of a permit to raise a railroad rate for an order fixing the rate would hardly of itself eliminate the problem of discretion. Whether or not all governmental discretion can advantageously be monopolized by the legislature raises problems deeper than those which Professor Freund discusses. He recognizes that "if [administrative] discretion

is appropriate to half-developed and imperfectly understood conditions, it is true that such conditions will confront legislation indefinitely" (p. 583), and that presumably to that extent resort to such discretion is permanently inevitable. But may it not also be that resort to discretion rather than rule is in some cases necessary, not merely because questions are not yet understood, but because of the very nature of the questions? Are there not questions which in the interest of public order must be decided by governmental authority, and which are yet permanently incapable of being decided by rule? At least this would seem to be true of many of the questions which have to be decided by law-courts—questions of value, due care, motive. The element of discretion involved in the decision of such questions is often obscured by calling them questions of "fact," but Professor Freund frankly recognizes that the decision of a question of "fact" is often an exercise of discretion (p. 70). There are doubtless objections enough to leaving the decision of such questions to administrative agencies; but there are often advantages which may be thought compensating. The point is that such questions must be decided by some form of authority; and the problem with which we are confronted is, therefore, not the elimination of discretion, but where discretion is to be vested. This problem cannot be fairly faced on an initial assumption that discretion is of necessity inherently bad, and that all questions can be justly decided by the yard-stick of fixed rules. A more extended consideration of such issues as these will have to be undertaken before a satisfactory theory can be formed of the proper limits of administrative discretion, and consequently of the proper form in which to cast administrative powers. Professor Freund deserves gratitude for insisting on the essential identity of the latter two problems.

Administrative rule-making, or "quasi-legislative" action, which covers the side of administrative activity complementary to the "case-to-case" powers treated by Professor Freund, is the subject of Professor Comer's monograph. His study is limited to the American federal government, and is based on an historical review, drawn from the Statutes at Large, of the "subletting of power" (p. 186) by Congress since 1789. This history, in Professor Comer's opinion, shows that "it is an erroneous supposition that the great mass of administrative legislation now playing such an important part, . . . sprang full-grown out of the complex conditions of modern life. . . . Congress has departed all along from its general rule of issuing laws complete in themselves

and effectual without the interposition of some other will than its own" (p. 50).

Professor Comer emphasizes the distinction between such delegation as that involved in *Field v. Clark* (143 U. S. 439), which he calls "contingent legislation," and a mere delegation to provide supplementary rules of detail to carry out the purposes of a statute (p. 26). Most of the many controversies over delegation in the field of tariff legislation have involved delegation of the contingent type. The history of these controversies is very fully given, and Professor Comer points out as to the powers delegated to the President, at least by the more recent acts, that, so far from their being, as claimed by the court in *Field v. Clark*, mere powers to find a fact or facts upon which the statute automatically depends for its operation, they actually leave open to the President "a field where guesses are permissible and politics possible," and where he is accordingly vested with a true legislative discretion. "There is no definitely named and readily ascertained contingent fact which determines [his action]. On the contrary there is interposed between the will of Congress and the consummation of the act of imposing a duty a will that is not the legislature's but that of the President" (p. 79).

The chief issues in connection with the rules and regulations supplying details supplementary to a statute have arisen out of the income tax regulations of the Bureau of Internal Revenue, and Professor Comer summarizes at length the material which has recently become available through Congressional hearings and otherwise concerning the methods of this office (pp. 139-170). The substantially discretionary, and therefore legislative, character of many of these regulations is recognized (p. 143), as well as the opportunity of officials to abuse such discretion (pp. 151-152). The thorny question of the bureau's power to give retroactive effect to its rules is discussed (pp. 164 ff.), and the author sees in the establishment of the Board of Tax Appeals, which is not bound by the rulings of the bureau, a check on these rulings in the interest of the tax-payer more effective than that which is available by resort to the courts.

The most novel and striking part of Professor Comer's study consists of the last two chapters, dealing with what he calls the "political safeguards" surrounding the exercise of administrative rule-making powers. These chapters describe the methods employed, chiefly in the Departments of Agriculture and the Interior, in framing rules and regulations under certain of the statutes which they are called upon to

administer. These methods involve frequent resort to conferences with representatives of the interests affected by the particular statute in question, e.g., with stockmen in connection with the administration of grazing on the forest reserves, with nurserymen in connection with the Plant Quarantine Act, and with the various interests in the cotton and corn trades in connection with the Cotton Futures and Grain Standards Acts. These conferences, which often take the form of public hearings, afford an opportunity for outside opinion to influence administrative legislation no less, though in a more informal manner and less responsibly, than legislation enacted by the regular law-making body. The meaning of "pressure politics" as applied to the latter branch of the law-making process is now fairly well understood. Professor Comer has laid the basis upon which an advance should be made toward understanding the same phenomenon in connection with rule-making by administrative authorities.

JOHN DICKINSON.

*Princeton University.*

*Justice and Administrative Law.* BY WILLIAM A. ROBSON. (London: Macmillan & Co. 1928. Pp. xviii, 346.)

Dr. Robson's volume is, as its sub-title indicates, a study of the British constitution, pursued by a method unmistakably British. Referring at the outset to the separation of powers as "legendary," the author rejects that superficial *formal* distinction which defines functions in terms of the class names of the organs functioning. Rather does he attempt, not a perfectly sharp, but a "working," *substantive* differentiation between adjudication and administration for the purposes of his analysis. An interesting chapter is devoted to current English illustrations of the exercise of "judicial" functions, as defined by administrative authorities. The whole discussion seems to hinge upon the assumption—with which the reviewer has long been in agreement—that if administrative tribunals are "judicialized," as Dicey would say, then the latter's case against administrative law largely falls to the ground.

But what does "judicialized" connote? Dr. Robson offers a suggestive description both of the institutional side of the judicial process as it appears in the ordinary courts and of the psychological elements of the "judicial mind." In the light of Mr. John Dewey's instrumental logic, and of what is now known—or thought to be known—about such psychological factors as conditioned reflexes, habit patterns,

mental images, and rationalization, the author's treatment of the "judicial spirit" would be wholly inadequate if we did not remember that for his purposes the vital question is merely whether the English administrative tribunals have the "judicial outlook" of the English judges.

His conclusion seems to be that, in general, they have this outlook. And since "administrative law is law in the making," and therefore has in some spheres advantages over law as administered by the English courts, it follows that the recent rapid development of administrative law in England is not a source for alarm. The writer, however, has some definite and helpful proposals to make for the improvement of the existing system, and concerning the proper powers, organization, personnel, and regulation of administrative tribunals. Political interference he considers a "bogey," so far as England is concerned. There are, however, in his opinion, several real dangers in the English system which should be carefully guarded against.

A chapter is devoted to what are called domestic tribunals—that is, organs of "voluntary" associations, such as trade unions, social clubs, and a host of others, which exercise with reference to their members extensive "judicial" functions with very little interference from the courts. Dr. Robson is strongly of the opinion that the scope of judicial review of their decisions should be increased.

Nowadays, scarcely a book on any phase of political science comes off the press without at least one chapter on "groups" within the state. We have been told of their bringing "pressure" to secure legislation, and of the problems they furnish jurists with respect to the nature of a corporation. Recently Dr. John Preston Comer has given some account of group opinion as influencing the formation of administrative ordinances. We have even heard of a "challenge to sovereignty" on behalf of certain groups. Now comes Dr. Robson to emphasize the fact that these associations exercise important "judicial" functions under English conditions. The problem would be suited to an American doctoral dissertation.

Dr. Robson offers a personal appraisal rather than a piece of technical research. Yet his volume is well-balanced, furnishes a good summary which is suited to the needs of students, and presents illustrations and citations of cases and reports of royal commissions which, it is believed, will aid the specialist.

JAMES HART.

*Johns Hopkins University.*

*Law in the Making.* BY CARLETON KEMP ALLEN. (Oxford: Clarendon Press. 1927. Pp. xxiv, 388.)

*A General View of European Legal History and Other Papers.* BY MUNROE SMITH. (New York: Columbia University Press. 1927. Pp. ix, 446.)

*Some Lessons from our Legal History.* BY WILLIAM SEARLE HOLDSWORTH. (New York: The Macmillan Company. 1928. Pp. viii, 198.)

Under the title *The Sources of Law*, the substance of Mr. Allen's book formed the Tagore lectures for 1928 in the University of Calcutta. The present title was given to the book in order to emphasize the fact that it is devoted to a discussion, not of the "literary" sources of law, but of the chief materials and processes in society which have gone to make up the general body of law, and especially of English law. The introduction contains a relatively realistic discussion of the problem of "the sovereign as source of law." The author's conclusion is that "there seems to us to be a world of difference between, on the one hand, conceiving a pre-existing unitary sovereign as the source of all law and as a prerequisite to the very existence of law, and, on the other hand, recognizing that in every modern state there must be some ultimate means of enforcing the law which society has developed in the natural process of its growth."

The first two chapters are devoted to a discussion of custom—its nature, origin, interpretation, and application. Chapter III contains an excellent history of the use of "precedents" in Roman law, modern Continental law, and English law; Chapter IV is a summary of the "general rules" now recognized in England as governing the authority and operation of precedents. The fifth chapter is devoted to "Equity," the sixth to "Legislation," the seventh to "Subordinate and Autonomic Legislation." The book is well printed and bound, and is equipped with an adequate index.

The author's treatment of his subject is, as a whole, permeated with a sense of the realities which underly the phenomena associated with the word "law." Unfortunately, however, the discussion of the part which judges play in the growth of law is at many points lacking in clearness, and is indeed inconsistent in its statements. Apparently this is due to a belief in the validity of the traditional notions of "logic" prevalent among the legal profession. This appears rather clearly when we are told that "the force and discipline of legal reasoning. . . . have made lawyers a model of that dispassionate think-

ing, clear vision, and nice appreciation of evidence, without which it is impossible to progress far in the orderly conduct of mundane affairs" (p. 72). It seems to the present writer that everyday experience with lawyers shows that as a class they are at least as little given to "dispassionate thinking" and "clear vision" as any other group in the community.

The truth is that the overbalancing majority of lawyers share with most of the members of other "learned" professions an almost complete ignorance of the inquiries into "logic" and human thinking associated with the names of Peirce, James, Dewey, Schutter, Russell, Whitehead, Keynes, Keyser, and many others—studies with which anyone who claims to think "dispassionately" and "clearly" must needs be familiar. So far as the present book evidences, these studies are for the author non-existent; the ideas of "logic," and especially of the nature of "induction," which he seems to hold are apparently derived from the naïve notions of Bacon and the writings of John Stuart Mill. He apparently does not realize that there is today no agreement as to the nature and limitations of what is called "inductive inference;" that eminent writers like Russell and Morris Cohen have asserted that what passes for it is either disguised deduction or else merely more or less methodical guesswork. Apparently the author still thinks of induction as a "logical" process in the sense of Mill, i.e., as a "method of proving the truth of general propositions."

In a similar manner the learned author seems to fail to appreciate the nature of "deductive reasoning" as now understood. For example, he tells us that "there is much to be said for the view that, ideally, every judicial decision should be the direct deduction of rule to fact" (p. 108). In truth, exactly nothing can be said for such a view; the proposition is logically and philosophically impossible. This review is not a place in which the matter can be discussed at length. It must suffice to assert somewhat dogmatically that the facts seem to be that whenever a judicial decision is called for on a state of facts which is novel, i.e., really calls for reflective thinking, no amount of purely "deductive" reasoning can possibly give an answer. In such cases there are always competing generalizations ("rules" or "principles"), either of which is capable of being "applied" *after suitable interpretation*, and one result or the opposite is reached according to which is chosen. The "deduction" can be made only after the judge, for reasons not always disclosed in the opinion, has decided to "apply" one rather than the other of these generalizations. But, *nota bene*, in doing

this the judge has necessarily read into the words in the "rule" or "principle" a meaning not previously there; if he now has the premises of a syllogism from which he can "deduce" his decision, it is because in truth he has made them what they are in order to reach the result in view. But, we are told, the judge uses "induction" in doing this. Note that from a case or series of cases, previously decided, one can by "induction" derive a large number of generalizations (rules or principles) of ever widening scope, any one of which accurately describes the case or cases under consideration. Which of these is *the* "rule" or "principle" established by the cases? What leads the judge to choose one rather than the other? Space fails in which to give the answer.

The author's following of the traditional, confused notions of "logic" leads him to the remarkable view that "in the overwhelming majority of cases where precedent is cited and relied upon, 'the judge's whole effort is to find the law, not to manufacture it. His concern is not with the future effect of the rule he is laying down, but with the application of what he conceives to be an existing rule to a concrete case before him' (p. 173). If all that is meant is that when a trial judge is dealing with a routine case, on all fours with many prior cases—one, therefore, which calls for no real thought after the facts of the case are known—well and good. But apparently this is not what is in mind. In very truth, in any case involving any real doubt as to how it ought to be decided, it is indispensable for the judge to consider the "future effect" of a decision one way or the other if we are to have intelligent judicial decisions. Fortunately, a few judges—Holmes, Cardozo, and Stone, for example—realize this. The future of our legal development depends upon bringing the fact home to the legal profession as a whole.

Professor Hessel E. Yntema has conferred a favor upon us all by collecting and editing the writings of the late Professor Munroe Smith which were scattered through various books and periodicals. It is a source of keen regret that Professor Smith unselfishly devoted so much time and energy to other academic duties that his writings are relatively few in number. In addition to the paper which gives its title to the book, this collection includes, among others, Professor Smith's discussion of the codification of American law, in his papers on state statute and common law, and the series of papers on four German jurists. What he has to say as to the small benefits likely to accrue from codification has a bearing upon the work of the American



Law Institute as now being carried on. "The rules of the law will be made somewhat more accessible," but "it will not be made any more intelligible, nor much more certain; nor will the practice of citing cases be abandoned" (pp. 60-61).

The Vinerian professor of the law of England at Oxford University visited the United States in 1927, primarily to lecture at Northwestern University; and the four lectures here reprinted were delivered at that institution. They bear the titles: "The Importance of Legal History," "The Common Law's Contribution to Political Theory," "The Rule of Law," and "A New Discourse on the Study of the Laws." The lectures, while interesting and well worth reading, add little to the material which the learned author had already given us in other places.

WALTER WHEELER COOK.

*Johns Hopkins University.*

*Federal Health Administration in the United States.* BY ROBERT D. LEIGH. (New York: Harper and Brothers. 1927. Pp. 687).

*The Problem of Indian Administration.* BY LEWIS MERIAM AND ASSOCIATES. Institute for Government Research Studies in Administration. (Baltimore: The Johns Hopkins Press. 1928. Pp. xxii, 872).

*The District of Columbia: Its Government and Administration.* BY LAURENCE F. SCHMECKEBIER. Institute for Government Research Studies in Administration. (Baltimore: The Johns Hopkins Press. 1928. Pp. xx, 943).

We have here three studies in public administration, each of a distinctive character. One deals with an important general field of public service, carried on by a number of different agencies in the national government, and by more numerous agencies of state and local government. Another deals with a special service of the national government, including, however, the operating field agencies as well as the central organization. The third deals primarily with the local government of the federal district, which, however, involves a good many branches of the national administration.

Professor Leigh uses the term "federal" to include not only the health services of the national government, but the interrelations of national, state, and local health agencies. His opening chapter deals with the evolution of local and state health organization; and in Chapter XV he considers the problem of centralization and decentrali-

zation in this field. On this matter he approves the development of national activities, but urges the need for more effective local agencies to prevent excessive centralization of health work within the states.

But the larger part of his book is given to the national health services, considering the constitutional bases, medical care of merchant seamen, medical care in the army and navy, of the World War veterans, and of "territorials" and other wards, and the development of preventive measures, scientific investigations, and national advisory and educational activities. Two chapters are given to the problem of reorganization of the national health services, for which he favors an executive department of education and health, without, however, including the veterans' bureau and other agencies as in the proposed plan of the Joint Committee on Reorganization. The final chapter deals with the public health personnel problem.

The book is a careful study of the field, of somewhat broader scope than Tobey's *The National Government and Public Health*, though the attention given to state and local agencies is comparatively brief.

The report on Indian administration is the result of an intensive survey made by a staff of specialists selected by the Institute for Government Research, at the request of the secretary of the interior. It goes much more fully into the detailed operation of the Indian service than the series of service monographs of the Institute, involving personal investigation of the field services, and offering definite judgments on the results, with recommendations for improvements. Part I (a fifth of the whole) presents a general summary of findings and recommendations, a foreword to the detailed report covering the origins and methods of the survey, and chapters on a general policy for Indian affairs, the organization of federal Indian work, personnel administration, and statistics and records. Part II gives a more detailed analysis of conditions, in seven sections, dealing with education, health, general economic conditions, family and community life and the activities of women, the migrated Indians, the legal aspects of the Indian problem, and missionary activities among the Indians.

The object of the survey, as set forth by the director of the Institute, has been, not to judge the quality of the work done by the Indian service with the resources at its disposal, but to consider the present conditions in the light of the practicable ideal as to what may be done. On this basis the report begins the general summary of findings with the statement: "An overwhelming majority of the Indians are poor,

even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization." As to the general character of the government services, it is stated: "The work of the government directed towards the education and advancement of the Indian himself, as distinguished from the control and conservation of his property, is largely ineffective. The chief explanation of the deficiency in this work lies in the fact that the government has not appropriated enough funds to permit the Indian service to employ an adequate personnel properly qualified for the task before it."

Numerous recommendations are made. The first outstanding need is the establishment of a division of planning and development, to formulate programs and develop policies. The second is the enormous strengthening of the personnel in immediate contact with the Indians. For the general improvement of the service, Congress should be asked for an emergency lump sum appropriation of \$5,000,000, to be available for certain designated purposes. No consideration seems to have been given to the proper relation of the Indian service in the general organization of the national administration.

The survey is a comprehensive and intensive study of an important branch of the public service of which too little is known; and the findings and recommendations should receive serious and favorable consideration.

Mr. Schmeckebier's volume on the District of Columbia is also a comprehensive and detailed study of the governmental and administrative machinery operating in the District of Columbia with reference to local affairs. Part I contains six chapters on history and general government, including a discussion of the financial and personnel systems. Part II deals, in 62 chapters, with the organization and operation of the various agencies. Like the service monographs of the Institute, the work is almost wholly descriptive, but another volume is promised presenting suggestions, critical and constructive, in the light of other studies in public administration.

A brief examination of this study, however, is sufficient to show the extreme complexity of the present structural organization. The District is treated in part as a separate political study, and in part as a portion of the administrative branch of the national government. The government of the District is divided among the commissioners of the District of Columbia, and several boards, commissions, or other agencies dealing with District affairs only; a number of agencies of the national government which have control over some District affairs;

other national agencies which have only contractual relations with the District government; and the judiciary.

JOHN A. FAIRLIE.

*University of Illinois.*

*Governmental Reporting in Chicago.* BY HERMAN C. BEYLE. (Chicago: University of Chicago Press. 1928. Pp. xxiii, 303).

"The right of the people to govern has been long established; but the corollary of that right, the right to be informed as to the matters which are involved in governing, has not been successfully guaranteed" (p. 6). With this dominant idea, Mr. Beyle attacks the problem of governmental reporting. The purpose of reporting is, first of all, to facilitate a public audit of the conduct of government. Though the author recognizes the importance of reporting as a means of facilitating the work of the controlling executive, the operating administrator, and the policy-determining body, and the service which is rendered also to students of government (p. 8), these phases of reporting are but slightly developed in his study.

As the title indicates, governmental reporting in Chicago is the chief consideration of the book. This is illuminated by a comparison of Chicago reports with a selected body of reports from other cities, including chiefly Boston, Philadelphia, London, Berlin, and a number of American city-manager cities. As a result of this elaborate analysis Mr. Beyle finds that: "About 58 per cent of the local governmental authorities of the Chicago area who might be expected to report did practically no public reporting at all during the three years covered by the investigation. Many of the authorities who did some reporting failed to present types of reports and publications that are highly desirable. . . . Much of the reporting was done with considerable irregularity; much of it was greatly delayed; and most of the reporting was done for periods which were unnecessarily lacking in uniformity. Most of the authorities failed to plan the preparation, the publication, and the distribution of their reports. Very few of the authorities made use of informal media for reporting and of informal approaches to the citizens' interest. Some of the reportorial work, particularly that done by the professional, non-political element in public service, compares favorably with the best governmental reporting elsewhere" (p. xvii).

The author estimates that not less than a quarter of a million dollars is expended annually in the printing of reports in the Chicago area, or a little less than nine cents per capita for the population of

the city. The average number of pages per year is about 20,000. Though Mr. Beyle has very little defense to offer for the present reports, he believes that nine cents per capita is not too much to pay for good reporting, if it is worth over twenty-seven cents per capita for the city to provide for a single city election (p. 52).

Following the detailed description and criticism of public reporting in the Chicago area will be found a list of "tentative conclusions as to what constitutes good reporting practice." These conclusions are brought together in very general terms in the seven pages preceding Chapter I, and again in somewhat more specific form in the last thirteen pages of Chapter VII. For example, twenty-four numbered recommendations are offered with regard to the presentation and subject-matter of reports, such as: "authorities should omit from their reports such information as serves no valid or important purpose;" "reports should contain adequate, exact, and, where possible, standardized classification of data;" "reports should contain needed tables of contents, indexes, marginal notation, headings, cross references, serial numbers, and lists of reports and publications;" and "governmental officials, in preparing the text of their reports, should adhere to all those principles of rhetoric which conduce to accuracy and clear expression." Of these recommendations, eleven are more or less specific, thirteen are rather indefinite, and fourteen are repetitions. In his final pages, Mr. Beyle projects two further avenues of study, the first to determine what a model report of a given governmental activity should contain, especially in the way of quantitative measurements, and the second, an analysis of political interest to determine the most effective methods of commanding citizen interest through reporting.

Though Boston is placed by Mr. Beyle at the head of American cities in the scope and character of its public reporting, New York City came very near to earning this position under the Mitchell administration. For a number of years leading up to the war, the New York Bureau of Municipal Research devoted extensive attention to the subject of public reporting. Analyses were made of all of the departmental and governmental reports very much along the lines of Mr. Beyle's Chicago study; model dummy reports were prepared for the more important departments; and plans were made for the introduction of administrative records which would produce the necessary information to fill in these reports. The work was done with full official backing. The failure of the program, with the return to administrative medie-

valism under Hyland and happy-go-lucky opportunism under his successor, has been a great disappointment. No one of these studies or reports was published, though conclusions drawn from them were carried into magazine articles and books, and the work seems to have escaped the attention of most political scientists.

Mr. Beyle's book is written around a logical and comprehensive outline. It contains two summaries, fore and aft; an extended table of contents; a full index; an annotated bibliography; innumerable illustrations, charts, and maps; two appendices dealing with Chicago reporting; copious footnotes; and running section heads. These excellent features of book-making are marred by the fact that the outline is too obtrusive and watertight; one has the feeling that material is repeated from section to section. Most of the photographs of city reports are illegible in the reduced size presented. One appears three times (frontispiece, pp. 48 and 52). Chart V, a cross-classification table with 645 squares, of which only 40 are used, would seem superfluous. Much other material in the text might better have been placed in the appendix, or omitted altogether. The excessive footnoting is pedantic (for example, an identical reference to three separate works is reprinted three times at the bottom of page 218, and a similar repetition appears four times at the bottom of page 239). The author does not follow his own rules with regard to tables, omitting titles in some cases (pp. 235, 238), and permitting the same word to appear at the head of many columns in the same table (Tables VII, VIII, and IX).

The great strength of this book lies in the tireless ingenuity which has been applied to the study of 60,000 pages of Chicago's public reporting. Its weakness lies in its great attention to superficial details without either a treatment of the philosophical assumptions on behalf of the student of government or a compensating grasp of practical material into which the public administrator can sink his teeth. The author has taken too many fine strokes with a monster brush, but he has finished one task that no one will ever have to tackle again.

Those who venture further in the study of public reporting must remember, as does Mr. Beyle most of the time, that reporting is not the end of government. The work comes first. The report is a mirror of that work, and while it is desirable to consider the kind and smoothness of the glass, the thickness of the silvering, and even the frame, we cannot deal with the objects seen in the glass without holding eternally before us the fact that these realities are in another world.

They do not belong in the categories of reporting, but in the categories of work and organization. Is it not true, also, that progress in reporting must come from the bottom up? Must we not begin with a very good report for a very well managed department of a very specific city? For this reason, it is to be doubted whether anything more important in this direction is now being undertaken than the work of the National Committee on Municipal Standards, which has set out to develop measurements of government service. And it is to be noted that this experienced group of specialists is beginning, not above the housetops with an aëroplane, but literally in the gutters with a micrometer.

LUTHER GULICK.

*National Institute of Public Administration.*

*State and Federal Corrupt-Practices Legislation.* BY EARL R. SIKES. (Durham: Duke University Press. 1928. Pp. 321).

"It is the purpose of this study," writes the author, "to make a survey of the corrupt-practices legislation which has been enacted in the United States by both the state and federal governments, and to examine the construction placed on these statutes by judicial interpretation." With commendable thoroughness this purpose has been achieved. The numerous cases have been studied and digested, and the statutes themselves have been carefully analyzed and conveniently grouped in the thirty-four pages of tables to be found in the Appendix.

However, despite the purely legalistic purpose of the author, an attempt is made throughout the volume to venture opinions about the practical workings of corrupt-practices legislation. That is to say, the author, in effect, essays the rôle of one who has investigated the practical workings of this type of legislation, even though in the Introduction he has limited himself to the purely legalistic aspects. In so wandering afield, he has detracted a great deal from his excellent legal researches. For instance, following a very good discussion of the laws against bribery, one finds a paragraph (p. 35) dealing with the practical results of the laws against this form of corrupt practice, which is not based on any careful study made by the author, but which nevertheless charges that "bribery at elections still continues on a large scale." Again, after a good chapter devoted to "fraud," the author summarizes the legal side in one sentence (p. 90) and uses the remainder of a long paragraph to refer to purely practical matters which he admittedly has not placed within the purview of his study.

There was need for a study of the laws and court decisions dealing with corrupt-practices legislation, and this need has been met by the author of this volume. There is a greater need, in the opinion of the reviewer, for a study of the practical workings of our laws against corruption. Law and practice do not always coincide, and this volume demonstrates how unwise it is to treat both law and practice without devoting at least as much hard research to the practice as to the law and its interpretation.

Chapter VI contains a good discussion of the power of the federal government over elections. But one wonders why it was necessary to write large portions of Chapters V and VII, since many of the subjects there dealt with have previously been treated. In the light of the information of recent date placed in these two chapters, footnote 98 on page 149 and the second paragraph on page 293 are hardly understandable.

One must dissent from the author's opinion (p. 224) that "the federal corrupt-practices act of 1925 provides probably about all the regulation of elections that the federal government should attempt at the present time." I do not know of any thoughtful student of the subject who is so completely satisfied. A complete overhauling of the existing laws is a matter of urgent public importance, and one of the essential points in improving our corrupt-practices acts, namely, making it worth somebody's while to enforce them, has been brushed aside as "unsound."

Thus, objections can be raised to the author's opinions. But in almost every case where objection can be taken, he has wandered from his legalistic and juristic field to the plane of practical politics. When he sticks to his expressed purpose, he is sound. When he brings in the practical phases of the subject, he is usually platitudinous or unconvincing.

The fact remains, nevertheless, that this book is a useful compilation and analysis of the laws and decisions relating to corrupt practices in elections. It is merely regrettable that its value has been lessened by casual excursions into the practical phases of political corruption.

*University of Michigan.*

JAMES K. POLLOCK, JR.

*The Native Problem in Africa.* BY RAYMOND L. BUELL. (New York: The Macmillan Company. 1928. Two volumes. Pp. 2,144.)

As an encyclopedia of native conditions in Africa, Dr. Buell's huge volumes of over two thousand pages and approximately one million



words deserve the appreciation of all who are interested in Africa and Africans. The acquaintance with Africa which Americans and many Europeans have is unfortunately limited to vague ideas of wild beasts and to fantastic notions of savage peoples and repulsive jungles. During his fifteen months of travel in Africa and about the same amount of time devoted to reading, conferring, and compiling, the author has evidently worked with unusual diligence. The task undertaken by one individual is almost unbelievable, both in extent and complexity.

"The purpose of this report," according to the preface, "is to set forth the problems which have arisen out of the impact of a primitive people with an industrial civilization, and to show how and to what extent these problems are being solved by the governments concerned." If this purpose were limited to one group of primitive people and to their relations with one European nation, the task would seem possible for one student within a period of two and one-half years. But this report endeavors to present and pass judgment upon the problems of almost the whole of Africa, south of the Sahara desert, including almost seventy million people and twenty-five colonies and countries, with all their varieties both of native people and of foreign representatives of commerce, missions, and government. The extensive list of topics on which the author has presented information and opinions for most of these colonies include the history of conquest and development, some geography and ethnology, land tenure, labor policy, taxation and expenditures, imports and exports, administrative systems, missions, education, agriculture and forestry, health and sanitation, military requirements, and native revolts.

To this comprehensive and perplexing task the author applied the money and the energy at his command with remarkable enthusiasm and conscientious effort to be fair and impartial. But one cannot help wondering whether such an undertaking is humanly possible for one person within the comparatively brief time used in the study. Is there not danger of superficiality in the presentation of the facts and of artificiality in the opinions and judgments pronounced? What does a careful study of the books reveal to one who has some acquaintance with the countries and the peoples discussed?

The merits of the study are numerous and real. As an encyclopedia of facts almost unknown to American and European readers, these books have undoubted value. The author has culled his information from a great mass of documents, books, and testimonies which would have appalled many students of African affairs. The variety of topics

is surprisingly comprehensive. As a rule, the varying points of view and the progress of events are faithfully recorded. The maps are excellent. The foot-notes and references are a valuable assembly of the most important documents that have appeared on African conditions and policies. Appendix L is an especially useful collection of statistical tables of facts concerning Africa and Africans. The bibliography of sixty-seven pages lists the best available books, documents, and periodicals relating to each of the countries from South Africa to Liberia. An index of fifty-two pages enables the reader to find the topics in which he is specially interested. Despite the necessarily factual character of the volumes, the author has been remarkably successful in vivid and interesting presentation. All these worth-while qualities will long command the gratitude of the students of Africa for the generosity of the Bureau of International Research at Harvard, and for the arduous toil and skillful compilation of Dr. Buell.

Had the author been content to be an encyclopedist, he could have made his work still more valuable, and could have avoided the impossible task of expressing opinions, passing judgments, and offering recommendations which are beyond the capacity of any one individual, however wise and industrious he may be. Even as an encyclopedia, the report has very unfortunately omitted some very important data which are essential to an accurate account of conditions in several of the countries. A notable illustration of such inadequate presentation is that of native education in the Union of South Africa.

It is impossible to understand the present status and future possibilities of South African natives without an accurate appreciation of the notable educational provisions as well as the remarkable progress of the native people through education in the Union. Though the native school facilities in South Africa, especially in Cape Colony and Natal, are superior to those in all other countries discussed, the author devotes only a scant three pages to a bare outline of these schools. The inadequacy of this account is further emphasized by the allotment of the remaining ten pages of the chapter to native organizations of varying importance, including almost two pages to "the Israelite movement," a fanatical outbreak, very temporary and limited as to number of natives involved, and discredited by the intelligent natives of the Union. Another unfortunate oversight is the complete omission of any reference to the educational expenditures of Southern Rhodesia, where missions and government are rendering an educational service that ranks among the best in Africa. Even in the Gold Coast section, the

facts include no mention of the Basle mission school system now conducted by the Scotch Presbyterians, and possibly the most effective system of schools in all tropical colonies.

While the author's work reveals a genuine effort to be impartial, his avowed purpose "to set forth problems" has impelled him to over-emphasis in some cases and under-emphasis in others. Herein is probably the outstanding defect of the report. Herein, too, is probably the explanation of many of the objections which several of the governments have expressed against the author's judgments and recommendations. To make clear the nature of these defects, it seems desirable to present some illustrations.

To Americans the section on Liberia is of especial interest. As in all sections of the volumes, the author has assembled much information. While, however, the documentary evidence is most valuable, his observations on Liberian conditions as he saw them are often misleading. This is especially true of some of his comments on education. But the most striking illustrations of hasty judgment are his comments on the American State Department, the American financial adviser, and the Firestone development. Had Dr. Buell realized the decades of conscientious thought devoted by our State Department to efforts in behalf of Liberia, he would not have written: "It is impossible for the writer to believe that the State Department of the United States would consciously trade the diplomatic support of this country for concessions to American capital, especially when these concessions, while highly advantageous to American interests, are unfavorable to Liberia and may lead to the organized exploitation of the aboriginal population." On the same concessions, President King, addressing the Liberian legislature, reflects his more intimate knowledge of his country and his people, when he declared: "The participation of safe and responsible American capital in the economic development of Liberia is indeed a phase of our foreign policy not built on abstractions. It is the result of a practicable conception of our national interest arising out of the unshakable belief of all Liberian administrations that the government and the peoples of the United States of America sincerely desire to see Liberia's independence maintained." On the basis of ten years' experience in various coöperative efforts in behalf of Liberia, the reviewer is convinced that our State Department has conducted Liberian negotiations with wisdom and a genuine regard for the best interest of the Liberian people. President King is right. Years of negotiations and experiments have convinced him and the State Department and the

long-time students of Liberian affairs that the Firestone developments constitute the best available arrangement to lift Liberia from the hopeless economic condition in which the country has been for decades.

The author's most pronounced fears and pessimism relate to the entrance of white settlers and industrialists into Africa. Every student recognizes the unfortunate basis for these fears. The antagonism of selfishness and human altruism is evident in every continent. The dangers of economic exploitation of country and labor are, of course, greatly emphasized among primitive people, unaccustomed to the ways of an industrial age. Had the author been content to present the facts, he would have avoided the charges of sweeping generalizations and of recommendations to governments, as if they had never given thought to the dangers of economic exploitation. To the British government, whose earnest endeavors to protect the natives and their land are proved by the author's own facts, he sounds this emphatic warning: "But the world should hold the British government strictly responsible if, having the example of South Africa, it should blindly encourage European immigration and the alienation of lands, thus bankrupting existing European enterprise and still further impairing the native population." Who more than the British, as the author's facts repeatedly show, are honestly struggling for the "dual mandate" of rights for the natives and a reasonable service to civilization?

Even South Africa is not without hope when the experience of the United States with slavery is recalled. There are in South Africa the same forces for justice as ultimately overcame slavery in our own country. Influential leaders among both Dutch and British are protesting against the present errors and injustices. The joint native councils of white and native peoples are actively urging and demanding the economic and political rights of the natives. Above all, native education, which has long been superior to that in all other parts of Africa, is becoming still more effective and thus preparing the natives to state their own case and insist upon their rights.

But all of these forces are overlooked or discounted by Dr. Buell. Even the almost miraculous progress and present status of the negroes in the United States seem to him to be "outweighed by the disabilities imposed upon them by the white people of America." Such pessimism is amazingly strange to those who realize the present status of the American negroes in economic position, in vigor of health, in education and culture, and even "in political and social advancement." The situation in South Africa is, of course, far more difficult. Such dis-

criminations as the "color bar law" are most serious. But the sound procedure for any foreign visitor would seem to be to state the facts and avoid judgments and prophecies on limited observations and experiences.

The chief value of Dr. Buell's contribution is, therefore, that of an encyclopedia of facts concerning Africa. For this he deserves the appreciation of all who are interested in Africa. Unfortunately, even the encyclopedic value has been somewhat marred by his determination to outline problems rather than to compile facts.

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THOMAS JESSE JONES.

*The Responsibility of States in International Law.* BY CLYDE EAGLETON.  
(New York: New York University Press. 1928. Pp. 227.)

The subject-matter of this work covers a field of instant importance in the discussions now proceeding looking toward the clarification of leading international problems. This is illustrated by the fact that the codification committee of the League of Nations has recently submitted the report of its sub-committee dealing with the subject, and that the "Research in International Law," conducted under the auspices of the faculty of the Harvard Law School, is engaged in its study; Professor Eagleton being one of the advisers.

While some French treatises dealing more or less with the general title have appeared, until the publication of Professor Eagleton's book there was nothing of real importance devoted to it exclusively, although Professor Borchard's *Diplomatic Protection of Citizens Abroad* dealt with one of its broad phases. Professor Eagleton may therefore feel that from the text-book point of view he has largely broken new ground. We may add that he has done this excellently, and has produced a work of value alike to the professor of international law and the lawyer interested in prosecuting or defending international claims.

The work opens with a treatment of the sources, foundation, and historical aspects of the subject. We are pleased to note in this connection that Professor Eagleton is not dazzled by the conception of national sovereignty which has blinded so many authors. One can sympathize with him in saying that "an absolute and irresponsible sovereignty, the final judge of its own acts, is in international relations merely a figment of the imagination, logically impossible in the face of the facts of practice, though its dead branches yet ramify throughout

the entire field of international law, badly hampering its growth" (p. 11).

Professor Eagleton discusses at some length differences of responsibility between the controlling state and jurisdictions subordinate in any respect, such as protected states, component parts of the British Empire, etc. He concludes that "the mere title to be called an independent state, though backed by such formal evidences as recognition, or the exercise of the so-called attributes of sovereignty, does not necessarily serve to locate responsibility" (p. 42). He considers at length, and with a wealth of citation, what constitutes state agency and responsibility for the acts of agents. He believes that "when an agent of the state acts within the authority conferred upon him by law, he is manifesting, by virtue of this law, the will of his state; and his act becomes the act of the state itself, bringing responsibility upon the state."

Responsibility for the acts of individuals receives ample attention, and the author then turns to the necessity of application for local redress. The ordinary rule requiring an injured foreigner to resort first to local tribunals for relief, before seeking protection or relief through his government, Professor Eagleton regards "in the present theory of international organization of fundamental and essential value" (p. 100). He points out, however, that "if the rule of local redress, which represents the independence of states, is to be respected, a strengthening of the [judicial] agencies within the state is needed." Of course, in this connection the Calvo doctrine comes in for large discussion.

Responsibility of the state for acts of mobs and insurrectionists receives appropriate attention. In the opinion of the reviewer, the author is absolutely correct in saying that "acts of insurgents, like acts of individuals, are not primarily attributable to the state; and they can be attributed to the state only if the latter has failed in its duties" (p. 148).

Professor Eagleton discusses liability for contractual claims. Space prohibits our development of his ideas. We refer to his well-supported idea that bonds are not to be in an excepted class as to responsibility. It may be believed that the hesitation in taking jurisdiction over bond claims manifested by some arbitral tribunals has not been justified. Next follows an examination into the measure of reparation, a topic which might to advantage have been expanded.

One of the author's conclusions is that as to the question of responsibility there is need of a "clearer statement of the rules of international

law, a more precise definition of what obligations the state has under the law" (p. 218). This work will go a long way toward assisting in the solution of the problem.

The author appears to support Professor Moon's thesis (*Imperialism and World Politics*) that future interventions in the internal affairs of a country should not be undertaken by one nation alone, but should, if undertaken at all, be the joint action of a large group of the nations interested in the maintenance of international law. In securing the development of the law of nations he counts much upon the League and the Permanent Court of International Justice.

JACKSON RALSTON.

*Palo Alto, California.*

*State, Sovereignty, and International Law.* BY JOHANNES MATTERN.  
(Baltimore: The Johns Hopkins Press. 1928. Pp. xix, 200.)

This little volume consists of a review of the leading theories advanced in the past concerning the nature of the state and of sovereignty, a review of recent criticism of the juristic conception of the state, and an attempt to estimate tentatively the value of both the juristic conception of the state and of the criticism of that theory. The treatment is calm, in spite of the controversial character of the subject—except where Mr. Laski is quoted—and not without flashes of humor.

The reviewer would be insincere if he did not comment strongly on two or three aspects of the treatment which Dr. Mattern gives to the Austinian theory. He is merely repeating here what he has said more fully in Chapter XIV of the third edition of his *International Organization* and in the April, 1925, number of the *American Journal of International Law*. He feels that it should be asserted very much more vigorously than Dr. Mattern is inclined to assert it, that any doctrine of state, sovereignty, or law which attempts to ignore the international field, or which divorces it from the constitutional field, or holds that international law is not law or legally binding, while all the nations of the world hold that it is, has something of the ridiculous about it. He feels that the possibility of reconciling international law with the juristic conception of the state is unfairly overlooked or neglected by Dr. Mattern, as by the Austinians generally, both as regards the preceding point and as regards the reconciliation of state sovereignty and international authority. Finally, he feels that Dr. Mattern should appreciate the fact that the doctrine of the supremacy of international law over national law is not a novel doctrine of some Austinian jurists,

or one which had to await the appearance of the League of Nations in order to secure validity. John Marshall recognized it as early as 1815, and all soundly scientific, i.e., empirical or inductive, students of jurisprudence have seen it for decades—ever since international law has been invoked to penalize nations in claims or other arbitrations, in spite of their national laws or official acts. Dr. Mattern, it is to be hoped, will rework his critique of the juristic conception of the state—which, he and the reviewer agree, seems to constitute the only sound theory of the modern state—with the facts of life in mind.

*University of Wisconsin.*

PITMAN B. POTTER.

*The League of Nations: A Chapter in World Politics.* BY JOHN SPENCER BASSETT. (New York: Longmans Green and Company. 1928. Pp. ix, 415.)

We have here what might be called a study of certain phases of the League of Nations from the point of view of an historian of world politics whose untimely death occurred before the publication of the book. Relatively little attention is given to the structure of the League or its detailed non-political activities, or to the Permanent Court of International Justice and the International Labor Organization. The League is studied on its political side by reference to the various meetings of the Assembly, particularly the first, second, and seventh, and by reference to certain outstanding incidents (Åland Islands, Vilna, Silesia, Corfu, etc.). The volume closes with chapters treating of Germany's entrance into the League, the relations between the United States and the League, and the probable future of the League.

It seems to the reviewer that certain unmistakable errors have been committed. It seems clearly wrong to declare that "the Assembly is the law-making body of the League." It seems, after Mr. Colcord's study, quite impossible to declare that in 1920 "an effective majority of the people had voted that the United States should not join the League." It also seems to the reviewer that the corporate and internationally socialized character of the League is exaggerated by the author. Granted that this may come in time, it remains true that the League is still today, mainly, not a supèrstate or a unitary state, but an inter-state league; and, this being true, the disparities of interest and power among the component states must and should be considered. In fact, there occur throughout the volume comments and judgments which appear to be inspired by thoughts of a unified world and a unified



world-government, rather than by a deference to the facts of the present world.

What those facts are is abundantly and very helpfully shown in most of the chapters of the book, particularly in the chapters on the Second Assembly, the Third Assembly, and the events surrounding Germany's entrance into the League. Pro-Leaguers who ignore the real facts of international politics would do well to take them to heart. The conclusion which seems indicated is, not that the League is of no value, as anti-Leaguers contend, nor that it is perfect, as some of its friends contend, nor yet that it ought to erase competitive politics on the part of the Great Powers, as the author of the book suggests, but that it is a very necessary piece of machinery for, if possible, restraining those Powers.

PITMAN B. POTTER.

*University of Wisconsin.*

*Papers Relating to the Foreign Relations of the United States. 1914 Supplement: The World War.* BY THE DEPARTMENT OF STATE. (Washington: Government Printing Office. 1928. Pp. cccix, 862.)

Edited under the supervision of the brilliant chief of the division of publications, Dr. Tyler Dennett, and his able assistant, Dr. Joseph V. Fuller, this volume is unusually well done. The ordinary method of grouping papers by countries has been departed from, and a topical arrangement, much more satisfying to the research student and much more revealing of the significance of the documents, has been substituted. The classification resolves itself generally into five principal groups: first, the immediate pre-war correspondence relating to the negotiation of the Bryan peace treaties; second, the papers relating to the outbreak and spread of the war, and including especially the various projects of American good offices and mediation; third, the papers relating to neutral rights, including such matters as the recognition of the Declaration of London, contraband, embargoes, mined areas, transfers of flag, censorship of the cables and mails, the problem of conversion, etc.; fourth, the papers relating to neutral duties, including the neutrality proclamations, the problem of reservists, loans to belligerent governments, internment, hovering, etc.; and fifth, papers relating to a miscellaneous group of problems and responsibilities, such as the passport problem, representation of belligerent governments in enemy countries, activities on behalf of prisoners of war and interned civilians, the work of Belgian Relief and of the Red Cross, etc. The papers are

arranged chronologically within each group, and preceding them all, as a sort of introductory text, is the correspondence between Secretary Bryan and Senator Stone, in which the secretary of state reviewed in summary fashion, for the Senate committee on foreign relations, the maintenance of neutrality by the United States in 1914.

Dr. Dennett has written a preface to the volume that is of exceptional value and importance. In it he explains the principles of selection and editing of the State Department documents in the *Foreign Relations* series, and includes as part of such explanation Secretary Kellogg's instruction of March 26, 1925 (the reviewer suspects that it may have been inspired by Dr. Dennett himself), which forms an admirable guide for the editing of the general volumes. Dr. Dennett explains also the special principles followed in the preparation of these supplemental war volumes, and notes particularly the principles governing the omission of material, since it has been found impracticable to publish every scrap of correspondence. Indeed it is admitted that whole files, as well as scraps, have been omitted. Such omitted material falls roughly into three groups: (1) papers that involve no important questions of policy or international law, such as the repatriation of American citizens stranded in Europe at the outbreak of the war and the placing of military observers with the belligerent forces; (2) papers dealing with issues in which policies of the American government or interests of American citizens were not directly involved, such as the activities of the United States as the representative of various belligerent governments in the enemy countries; (3) papers dealing with problems of international law that raised no new issues, but were settled according to previously determined principles or were dropped because the facts were found not to be as first represented. Wherever such omitted material has been published elsewhere, however, reference is made to the publication concerned, and deletions are carefully noted.

The hundreds of papers are listed, both by topics and by countries, and are chronologically arranged within each list. There is also an adequate index. With this volume as a standard, the student of government and diplomacy will look forward to the succeeding volumes, which we are assured are well under way.

CLARENCE A. BERDAHL.

*University of Illinois.*

*Oriental Exclusion: The effect of American Immigration Laws, Regulations, and Judicial Decisions upon the Chinese and Japanese on the*

*American Pacific Coast.* BY R. D. MCKENZIE. (Chicago: The University of Chicago Press. 1928. Pp. viii, 200.)

*Residential Orientals on the American Pacific Coast; Their Legal and Economic Status.* BY ELIOT G. MEARS. (Chicago: The University of Chicago Press. 1928. Pp. xvi, 545.)

Mr. McKenzie has written a worth-while study of the administration of our immigration laws in so far as they affect Chinese and Japanese. For some reason, he pays a good deal more attention to the treatment of Chinese than of Japanese, probably because of the absence of data in regard to the latter class, which was placed under our own supervision only in 1924. He shows the hardships imposed upon Chinese entering this country, some of whom are held in detention at American ports for six to eighteen months. If the Japanese should be subjected to similar treatment as a result of the 1924 act, the international consequences might indeed be grave. In future years a unified China may join with an indignant Japan in a vigorous protest against the system of exclusion as practiced by the United States. The book might have been strengthened by quotations from the Japanese press and from the annual address of the government to the Diet on foreign affairs, setting forth Japanese sentiment toward exclusion.

For some reason, the American government interprets the term "merchant" as applied to the Chinese to include domestic as well as international traders. But as applied to the Japanese the term "merchant" is restricted to international traders. The immigration laws prohibit both Chinese and Japanese citizens of the United States from bringing their alien wives to reside in this country, although an alien merchant of the same race has this privilege.

Mr. McKenzie states that the effect of the act of 1924 was to cause a business depression among the Japanese business communities on the Pacific Coast; a rapid development of Japanese language schools; a decline in anti-Japanese sentiment; and increased immigration from Mexico. He does not believe that the act had any material effect on trade between the United States and the Orient.

The Institute of Pacific Relations or some other body might make an important contribution if it were to undertake a study, not only of immigration legislation, but also of its administration in all the leading immigrant-receiving countries in the world, in an effort to devise a system of administration which, while enforcing the principle of restriction in accordance with the wishes of the legislative body concerned,

would also subject the individual applicant to as little inconvenience as possible.

Mr. Mears has made a study of the legal and social status of Orientals on the Pacific Coast. Several hundred pages analyze the anti-alien land, naturalization and other restrictive laws, covering fairly well-known ground. The activities of Orientals in mining, manufacturing, agriculture, trade, and domestic and personal service are then discussed. The last hundred pages consist of valuable tables and documents. Mr. Mears has done an immense amount of work upon this study and has made use of the case documents of the Survey of Race Relations. Nevertheless, his book suffers from indigestion. Nearly every page contains long quotations from documents or writers, and the material is not closely enough knit together. As a source-book of material, it is, however, valuable. Both books are an important contribution to the Oriental-American problem.

RAYMOND L. BUELL.

*Foreign Policy Association.*

*The Supreme Court of the United States; Its Foundations, Methods, and Achievements: An Interpretation.* | BY CHARLES EVANS HUGHES  
(New York: Columbia University Press. Pp. 269.)

This volume constitutes a notable addition to the distinguished series of lectures which have been delivered at Columbia University on the Blumenthal Foundation. The fact that the author was an associate justice on the Supreme Court for six years is likely, however, to create an erroneous impression of the scope and content of the book. The reader who expects a garrulous and gossipy recital of confidential information as to the Court and its work is doomed to disappointment. He will find, on the contrary, a prudent, restrained, and rather conventional discussion. It is accurate, lucid, and suggestive, but it carries virtually no surface indication of the intimacy with which Mr. Hughes knows what he is writing about.

There are six chapters in all. The first presents the historical background of the Court and analyzes the fundamental principles governing the exercise of judicial power. The third and fourth chapters, entitled "Cementing the Union" and "The Nation and the States," are essentially compact summaries of the leading constitutional decisions upon the topics under discussion. Our chief interest centers in the three remaining chapters. The second deals with "The Court at Work," and gives a judicious and informing account of how the Court handles cases

in conference, and of the influence which individual justices may exert. In all this Mr. Hughes assures us, however, that he is not violating any confidences gained while serving on the Court. The last two chapters are devoted to "Liberty, Property and Social Justice." Here are reviewed, without criticism or constructive comment, the leading due process cases, as well as those relating to the various guarantees of the bill of rights. Mr. Hughes' general method is to match the reactionary decisions against the more liberal ones, to show the fluctuations in attitude toward social legislation from time to time and from justice to justice. The impression which he quite obviously seeks to make is that in dealing with these problems the Court succeeds, on the whole, in preserving an attitude which is fairly objective and free from prejudice.

It is certainly not surprising to find Mr. Hughes opposed to any interference with the methods of the Court or the scope of its authority. He defends the theory and practice of judicial review, and deprecates any attempt to prevent five-to-four decisions invalidating statutes, or any provision for the rendering of advisory opinions by the Court. The book is written in Mr. Hughes' clear, compact style. It is a thoroughly interesting and valuable book for student and general reader alike.

ROBERT E. CUSHMAN.

*Cornell University.*

*Pressure Politics: The Story of the Anti-Saloon League.* BY PETER H. ODEGARD. (New York: Columbia University Press. 1928. Pp. x, 299.)

When a reviewer finds himself confronted with a volume which represents "partial fulfillment of the requirements for the Ph.D. degree" he at once asks himself, "Will this prove to be a book or just a thesis?" In the case of Mr. Odegard's work—I believe a recent thesis—his mind is very soon set at rest. It is a book, not just a thesis.

*Pressure Politics* will appeal to two groups of political scientists: the pluralist tracking down the activity of interest-groups, and the student of practical politics replenishing his arsenal of case material. Only two classes of readers will find the book distasteful: those to whom the Anti-Saloon League and its prohibition allies are all black, and those to whom they appear all white with gilt edges. For, as to this organization—to which Mr. Odegard confines himself pretty closely—it is the point of the book that it was led by honest and sincere (if

sometimes unscrupulous) men, men of great political wit (perhaps therefore sometimes unscrupulous), men backed by a very substantial following of white, Protestant, American voters, male and female.

Not that *Pressure Politics* is in any sense a whitewashing of the League. Its propaganda methods are amply demonstrated to be hysterical, crude, and far-fetched. But this is as much a reflection on the level of American political intelligence as on the League. Its unscrupulousness in bringing pressure to bear is documented, point by point, in many examples. Here, however, the evidence, direct and indirect, shows plainly how the stage was set for corruption by "wet" tactics and wealth, by the devious and irresponsible machinery of American representative government, and by the combined apathy and docility of the American voter. Nor are indictments lacking against money-changers in the very temple of the prohibition movement. All this is set forth in rich detail, with many source quotations and statistical tables.

The conclusion that the reviewer has drawn from the book is, not that the Leaguers are either a band of fools and knaves or yet a flock of angels, nor that prohibition is either right or wrong, but that it is a great pity that any issue must be decided on the plane of the prohibition contest. The basic criticism implicit in the book is a criticism of American political life.

PAUL LEWINSON.

*Ohio State University.*

*Recent Theories of Citizenship in its Relation to Government.* BY CARL BRINKMANN. (New Haven: Yale University Press. 1927. Pp. vi, 126.)

These four essays are the Dodge Lectures delivered by Professor Brinkmann at Yale University in the spring of 1926. If they compare unfavorably with the popular clarity of some of their predecessors, like Elihu Root's *The Citizen's Part in Government*, they are in no way their inferiors in profundity of analysis. In fact, they presuppose the intellectual gourmandry of a mind enjoying the elaborate make-up of ideas which has become the fashion in Germany of late.

The essays deal with "The Citizen and the Subject," "The Metaphysical State," "The Pluralistic State," and "International Citizenship." In all of them Brinkmann hopes to present "a realist conception of citizenship." Such realist conception will, he expects, "reconcile the natural and traditional elements [of citizenship] with the abstract and

rational postulates of democracy." This reconciliation of the two elements of citizenship *within* the modern state is attempted primarily in the first essay, which contrasts the democratic concept of the citizen with the autocratic concept of the subject. The discussion of the historical background from which these conflicting concepts arose reveals Mr. Brinkmann's remarkable ability to focus relevant facts for the purpose of elucidating intricate combinations of theory. He proves himself a learned pupil of Max Weber, capable of carrying on social research by the methods suggested by that great sociologist. By attempting to render this method of approach in English, these four essays are of outstanding value in accomplishing a purpose to which Brinkmann wishes especially to see them dedicated, namely, "to promote . . . coöperation between national branches of research." Mr. Brinkmann's current coöperation in a series edited by Professor Merriam dealing with the promotion of patriotic concepts in different countries ought to prove highly interesting.

Through his realistic analysis, Brinkmann is led to the conclusion that "there is a common tradition for all the members of the European family of nations leading up to modern democracy." He finds two streams of political thought, 'one which shows man inseparably bound together with his kind . . . , the other which watches with jealous criticism the rights of the individual.' Having concluded that there is such a common tradition for the entire European polity, the question becomes significant "as to what parallel instruments of political and legal technique have by those . . . governments been directed to the same constitutional objectives." After examining natural rights, Brinkmann suggests that "the whole catalogue of the fundamental rights of modern constitutions, so perplexing to lawyers in its vagueness and apparent arbitrariness, becomes intelligible and consistent as soon as you review it in the light of the social and economic service" which they are capable of rendering. But Brinkmann does not wish to identify himself with socialism as a critic or successor of democracy. He is concerned with showing "that the ways of democracy itself are running in ever restless variations between the two extremes of wholesome individualism and wholesome collectivism." Brinkmann's realistic approach thus resolves itself into an "humble appreciation of the relativity of democratic government."

Considering these essays as a delicate *hors d'oeuvre*, we await with a keen appetite Mr. Brinkmann's study of American patriotism.

CARL JOACHIM FRIEDRICH.

*Harvard University.*

*Political Science and Government.* BY JAMES WILFORD GARNER. (New York: American Book Company. 1928. Pp. x, 821.)

To many political scientists this recent book from the pen of Professor Garner will appear to be a revision of an earlier work, published in 1910, under the title of *An Introduction to Political Science*. This older volume is so familiar to the readers of this *Review* that little need be said of the content of the new one. The general arrangement and method of treatment remain the same, but revisions and additions are so numerous that it should properly be regarded as a new book. Chapters on citizenship and the origins of the state are omitted entirely—the latter doubtless because it is of more direct interest to historical sociologists than to political scientists. In the chapter on the forms and types of states the author very properly warns against attempts to classify states on the basis of differences in governmental organization, but proceeds to follow the traditional method of treatment as a concession to popular usage. However, theories of state functions are transferred to the chapters on government, where they properly belong.

The purpose of the author seems primarily to have been to present an exhaustive summary of the political views of writers of all ages, together with an evaluation of their judgments. This purpose is admirably fulfilled. The contents, however, likewise reveal much of the writer's own political philosophy. It is clear, for instance, that he has not been led astray by contemporary fulminations against the doctrine of state sovereignty, although he denies it any legitimate place in the field of the state's external relations. He is a conservative defender of the older view of representation, but guild socialists and related writers of our day are treated fully and fairly. The idea of group representation is conceded to have certain value, but the author is clearly not impressed with it as a cure-all. In the discussion of the metaphysical theory of the state Rousseau is rather surprisingly omitted. Perhaps the author relates too closely the later German imperial propagandists of the nineteenth century with the earlier German idealists. He says that the English school never carried the metaphysical doctrines as far as the Germans, but admits that Bosanquet measures up to Hegel in most of the essentials.

The book is singularly free from mechanical defects; such typographical errors as appear on page 32, in the quotation from Seeley, are rare. On the whole, Professor Garner's well-known clarity of expres-



sion, remarkable scholarship, and balanced judgment combine to make this one of the most satisfactory of his many treatises.

C. O. GARDNER.

*University of Cincinnati.*

*Parliamentary Logic.* By WILLIAM GERARD HAMILTON. (Cambridge: W. Heffer and Sons, Limited. 1927. Pp. 88.)

*The Statesman: An Ironical Treatise on the Art of Succeeding.* By HENRY TAYLOR. With an Introduction by Harold J. Laski. (Cambridge: W. Heffer and Sons, Limited. 1927. Pp. 191.)

An English house has begun the publication of a Reprint Series with two volumes that should interest any student of political science and should be particularly welcome to men engaged in the making or administering of laws. William Gerard Hamilton's *Parliamentary Logic* is republished for the first time since its appearance in 1808. It consists of 553 brief paragraphs of suggestion for success in debate, apparently notes jotted down in the course of more than two score years in the House of Commons. These notes had not been elaborated into an orderly treatise, nor even classified, at the time of Hamilton's death, and when later they were printed, it was with no attempt at sequence. The result suggests the accidents of a well-shuffled pack of cards.

Of the advice itself one may fairly say that, whether in a legislative assembly, on the hustings, or at the bar, it would equally help the sincere advocate and the unscrupulous demagogue. To win, by fair means or foul, is the aim. The counselor wholly ignores such petty considerations as right or wrong, truth, and honor. Indeed, stress is laid on ways to make the worse appear the better reason.

Sir Henry Taylor seems to have meant *The Statesman* to be equally cynical, judging by the sub-title he gave to it—*An Ironical Treatise on the Art of Succeeding*. He did not live up to his adjective, for to most of his advice no one could reasonably take exception. Although written with only English conditions in mind, and almost wholly devoted to the administrative side of public service, to which few American statesmen give long attention, there is enough that bears on the workings of human nature in any and all of the relations of public office to make perusal worth while, here or anywhere else.

Each of these volumes, however interesting, raises a question as to efficacy. Whether success in debate or in statesmanship can be achieved,

or even much advanced, by studied effort in mechanics is a matter of doubt. The man who tries to learn all the rules these authors lay down should beware lest in laboring for artificial excellence he forget to be his natural self. Furthermore, maxims and dogmatic counsels may supplement, but they cannot supplant, simple decency, clear thinking, and general culture as the most effective means to such success in public life as is worth while. These inspire the confidence that awards honor.

ROBERT LUCE.

*Washington, D. C.*

*The Inquiring Mind.* BY ZECHARIAH CHAFEE, JR. (New York: Harcourt, Brace and Company. 1928. Pp. x, 276.)

Professor Chafee has here collected and republished various papers and addresses. Most of these deal with the problem of freedom of speech as reflected in contemporary and recent events—war-time trials, industrial controversies, the present state of Boston's campaign of censorship, and the like. All of these are useful case studies to give to the student of politics as well as the "average citizen." A few reviews which are included are of much less value, although that of White's life of Wilson contains much common sense. The two leading papers, "The Inquiring Mind" and "Give Your Mind Sea Room," are above the average of addresses before university audiences (for they were so used), especially in their comment on the relation of the alumnus to his alma mater. Professor Chafee writes as one who would have the powerful classes in society "fight fairly and wisely;" he has not explored the possibility that such an attitude will come only when their critics are sufficiently strongly organized and capably led to force the respect and fair treatment which he would give them as an absolute right. In most of the papers the style is adequate, although not rising to the heights of the positions argued at times. Teachers will do well to introduce their students to the volume as a stimulant.

JOHN M. GAUS.

*University of Wisconsin.*

## BRIEFER NOTICES

### AMERICAN NATIONAL GOVERNMENT AND CONSTITUTIONAL LAW

*The President's Removal Power Under the Constitution*, by Edward S. Corwin (The National Municipal League, pp. 70), is a reprint, with some textual changes and the addition of a valuable preface, of an able

article which Professor Corwin originally published in the *Columbia Law Review*. It is a vigorous attack upon the majority opinion of the Supreme Court in the Myers case, which held that the President's power to remove officers appointed by him with senatorial consent, being an inherent executive power, was constitutionally beyond the reach of Congressional restriction. This position is criticized as unsound, both historically and logically. Professor Corwin's principal contribution is to emphasize what the Court ignored, i.e., that the issue between this executive power of removal and any implied legislative power to restrict such removal should be resolved, not by a uniform and sweeping rule, but according to the nature of the office from which removal is sought. In other words, to assert an unlimited presidential removal power over cabinet officers or the President's other executive subordinates does not necessitate the assertion of a similar power over offices, such as the comptroller-general or the great independent commissions, whose functions are not primarily executive. The argument is convincing, and the essay is quite the most valuable and thoroughgoing analysis of the whole problem that we have. It is a satisfaction to have it available in this convenient form. R.E.C.

*The Constitution of the United States in Some of Its Fundamental Aspects*, by Gaspar G. Bacon (Harvard University Press, pp. 201), comprises six lectures delivered in 1927 at Boston University. The book's scope is indicated by the chapter headings: "The Constitutional Convention of 1787," "The Four Corner-stones of the Constitution," "Our Dual Form of Government," "What the Constitution Means to the Citizen," "The Balance Wheel of the Constitution" (judicial review), and "The Dangers to Representative Government." The book follows somewhat the method and style of Mr. James M. Beck's volume on the Constitution, from which the author has borrowed a good deal. It is reverential in tone, and written from a highly conservative point of view. Possibly due to its necessary brevity, it becomes increasingly dogmatic as it progresses. It is liberally interspersed with the author's opinions unsupported by evidence. The last chapter is less relevant to the main subject of the book than the others, being a vigorous attack on the initiative, referendum, recall, and direct primary and a plea for more effective and responsible party leadership. The book is written in pungent and readable style. R.E.C.

*An Outline of American Federal Government*, by Stuart Lewis (Prentice-Hall, pp. ix, 224), follows the order of the traditional text-book on

American national government, with chapters devoted to background, the Constitution, the Senate, the House of Representatives, joint Congressional activities, powers of Congress, the President, the departments, the independent establishments, the judiciary, relations to states and territories, citizenship, international relations, and political parties. The characteristic feature of the work is its conciseness, which is both an advantage and a limitation. The advantages are self-evident; the limitations arise from the difficulty in making a mass of detail interesting in short space. There are several unfortunate typographical errors for which perhaps the publishers rather than the author should be held responsible. The "Bibliographical Sketch" appears in the table of contents as "Biographical Sketch," and the author's own name in connection with his *Readings in Party Principles and Practical Politics* appears as "Stuart Leins" (p. 184).

*The Constitutional Status and Government of Alaska*, by George W. Spicer (Johns Hopkins Press, pp. ix, 121), discusses the acquisition of Alaska, its constitutional status, the civil and political rights of its inhabitants, the judicial system, and the legislative power. The author is of the opinion that the agencies for the enforcement of law now diffused among various establishments should be consolidated under the department of justice; that the economic welfare of the territory would be enhanced by the extension of a wider power to the territorial legislature, especially in regard to game and fisheries; and that it is the duty of Congress to "disentangle the departmental red tape as exhibited in the multiplicity of federal agencies, with their overlapping jurisdiction and divided responsibility," and consolidate "all federal control in Alaska, with the exception of purely national and scientific or investigative functions, in a single federal agency under the department of the interior."

Houghton Mifflin and Company has taken advantage of the presidential year and the one hundredth anniversary of Jackson's election to bring out an anniversary edition of *The Party Battles of the Jackson Period* (pp. xix, 506), by Claude G. Bowers, who was the "key note" speaker at the 1928 Democratic convention. The book, which is written in a facile style and with a scholarly understanding of the history of the period, has already established its reputation, and the publishers are to be congratulated upon making it more accessible through a new edition, which is uniform with the author's even more famous work on *Jefferson and Hamilton*. A new book on the same general period, of

interest alike to historians and students of American political theory, is *Calhoun and the South Carolina Nullification Movement*, by Frederic Bancroft (Johns Hopkins Press, pp. vi, 199).

Thomas H. Sherman, private secretary to James G. Blaine, has written his reminiscences in a volume entitled *Twenty Years with James G. Blaine* (Grafton Press, pp. v, 194). While there is little that is new in the book, the material has a certain directness and freshness because of the close connection between the author and his subject. There is an introduction by Nicholas Murray Butler.

#### STATE AND LOCAL GOVERNMENT

Two reports dealing with public administration in New York are Volume V of the Regional Survey of New York and its Environs on *Public Recreation* (pp. 256), and *The Finances and Financial Administration of New York City* (Columbia University Press, pp. xxii, 361), edited by Lindsay Rogers. While describing the recreational facilities of Greater New York, the first-named volume contains many ideas and principles which have application to recreation situations throughout the country, and should therefore be of general interest to students of municipal administration. The second-named volume is an exhaustive study containing the recommendations and report of the sub-committee on budget, finance, and review of the City Committee on Plan and Survey. The bulk of the volume is made up of reports on the fiscal structure of New York City, the planning of New York City's expenditures, expenditures for salaries, purchasing agencies and methods, the revenues of New York City, the assessment of property for taxation and special assessments, New York City's debt policies and subway finance, each of which has been written by a well known authority such as Joseph McGoldrick, Luther Gulick, A. E. Buck, Russell Forbes, Paul Studensky, and John Dickinson. There are numerous tables, digests of laws, and ordinances and appendices. No similar study of New York's finances has been attempted before, and it is very clear that such an excellent piece of work could not have been accomplished in a year and a half without the coöperation of a number of experts and the able direction of Dr. Rogers.

*The Classified Property Tax in the United States* (Houghton Mifflin Co., pp. xiv, 492), by Simeon E. Leland, is the most recent of the Hart, Schaffner and Marx Prize Essays in Economics. The book deals with the background and history of the movement for classification, the

theoretical justification for the tax, the arguments for and against it, actual experiments with the classified property tax in such states as Pennsylvania, Connecticut, Maryland, Rhode Island, and Iowa, and the results. The author's conclusions are, first, "that if legal classification is not adopted, illegal or extra-legal classification will be found as long as property is taxed by a uniform rule. . . . In the second place, the right to adopt classification is essential in any program of state tax reform. . . . In the third place, the results in every state indicate that classification must be accompanied by adequate and efficient administration. . . . Finally, the greatest gain from classification has been the added justice which it has accorded those classes of tax-payers whose property has been unduly taxed by the high general property tax rates."

Teachers of state and local government interested in the subject of the administration of justice in cities will find John MacArthur Maguire's *The Lance of Justice* (Harvard University Press, pp. xi, 305) a most valuable source of both information and inspiration. The book, which is written in a style more readable and attractive than the average, gives a comprehensive history of the organization and development of the Legal Aid Society of the city of New York during the last half-century. The author illustrates his points and enriches his material by narrating a large number of actual cases with which the Society has dealt. After reading the book, one must agree with Mr. William D. Guthrie, who writes in the foreword: "Legal aid has been the greatest movement of all English and American legal history for bringing justice to the poor, . . . and there can be no doubt that it has furnished . . . the greatest object lesson in modern judicial administration of both civil and criminal justice." Closely related to the same subject is *Piedpoudre Courts: a Study of the Small Claim Litigant in the Pittsburgh District* (Legal Aid Society of Pittsburgh, pp. 219), by Professor Gustav L. Schramm, of the University of Pittsburgh. Mr. Schramm's study is based upon an examination of over 18,000 cases of petty legislation. *Progress in the Law*, which is No. 225 of Volume CXXXVI of the *Annals of the American Academy of Political and Social Science* (March, 1928, pp. 187), also treats of the same topic in its articles on conciliation and legal aid, legal aid organization as lobbyists for the poor, and the public defender in police courts. Other articles of special interest to students of government are: "The Changing Attitude of the People Toward the Law," by Dean Roscoe Pound; "Uniform Laws"; "The

Rule-Making Power of the Courts"; "Administering Justice in Cities," by Herbert Harley; "Executive Clemency;" and "Legislative Reference Work."

*Carter Henry Harrison I*, by Claudius O. Johnson (University of Chicago Press, pp. xiii, 306), in the words of Professor Charles E. Merriam, at whose suggestion the study was undertaken, "is a significant attempt to study the social situation under which an urban leader has developed, to examine as carefully as possible his most striking traits, to analyze his special skills and the techniques he employed in particular situations, and to draw this material together into as close-knit a texture as might be." The author has accomplished the purpose expressed by Professor Merriam and has given the student of politics and of municipal government a readable and keen analysis of a great mayor of Chicago who was at the same time an honest man, a clever politician, and a good administrator. Part I is devoted to Harrison's ancestry, education at Yale, early life, and general social, economic, and political background. Part II deals with personal traits; while Part III discusses Harrison's political technique, with special reference to his methods of securing nominations and elections; "how he won and held his following; how he acquired and used his enemies; his leadership . . . and . . . his tactics in dealing with his council."

*Supervision of the Conduct of Elections and Returns, with Special Reference to Pennsylvania* (privately printed, pp. v, 156), by Edward Bates Logan, was written as a doctoral thesis at the University of Pennsylvania under the direction of Professor Clyde L. King. The author concludes that bipartisanship is not a real safeguard and that the election system in Pennsylvania is decentralized to an extreme degree. "Non-partisan boards of election, appointed by the governor, such boards to have the power of appointment and supervision of precinct election officers, promise better results." The Department of Efficiency in Government of the National League of Women Voters has issued two very useful pamphlets: *A Brief Digest of the Laws Relating to Absentee Voting and Registration* (pp. 98), and *A Supplement* (pp. 20) to the 1927 edition of *Nominating Methods*, noting recent changes in primary laws. Both booklets were prepared by Miss Helen M. Rocca.

Teachers of state government have long felt the need of careful studies of recent constitutional conventions, and Dr. Ralph C. McDanel has filled the need, so far as one important state is concerned,

by his work on *The Virginia Constitutional Convention of 1901-1902* (Johns Hopkins University Studies in Historical and Political Science, series XLVI, no. 3, pp. xii, 166). He reaches the conclusion that while the chief weakness of the convention was its lack of effective leadership, "the convention did the state a great service when it removed the negro from politics and thus rendered the purification of the electorate possible," and that "the corporation article was a real piece of constructive statesmanship" which "has been worth to the state many times the cost of the convention in money, not to mention its service in removing the political departments of the government from the suspicion of corporate control."

*The Fiscal Problem in New York State* (pp. 275) is the latest of the studies in taxation and public finance published by the National Industrial Conference Board. Gross expenditures of state and local governments have grown from 468 million dollars in 1917 to 1,108 millions in 1925, an increase of 136.5 per cent. Allowing for the general increase of prices, there has been an increase of 80 per cent in expenditures. Per capita expenditures in "1917" dollars have increased 62.2 per cent. The expenditures of New York City and the villages have increased less than the general average; while counties, towns, and school districts have increased their expenditures more rapidly than the average. The existing tax system is examined in detail, and some proposed sources of additional revenue are discussed. An increase of state aid to local governments is anticipated, and central control of local finance is considered desirable.

#### FOREIGN AND COMPARATIVE GOVERNMENT

*Modern Japan and its Problems*, by G. D. Allen (Dutton, pp. 226), contains an interesting chapter on the political system. In the opinion of the author, "the Japanese system of government resolves itself into an adjustment, varying from period to period, between the claims of rival groups. The militarists and the bureaucrats, whose power is based on the Sat-Cho combination, and who express their policy through the Genro and the privy council, are still the most powerful influence in the government. But their policies have been modified in accordance with the demands of the various industrial groups, who are fighting for the control of the government, both by alliance with the parties in the legislature and by more direct pressure exercised from outside. The former method of attack has increased the power of the



lower house; but although it is becoming more and more difficult for a government to exist without the support of political parties, the latter are very far from possessing the initiative in policy. A further check on the power of the bureaucrats lies in the growing strength of labor; and, finally, though the people as a whole take little interest in political technique, there is the power of public opinion against which no government can or will act." The author concludes by stating that it "seems probable that some form of compromise between a parliamentary system of the English type and government by functional bodies and groups will ultimately emerge."

*A Political Handbook of the World* (pp. 192), edited by Malcolm W. Davis and Walter H. Mallory, and published for the Council on Foreign Relations jointly by the Harvard University Press and the Yale University Press, fills a long felt need. It gives in compact and easily accessible form the essential information on (1) the composition of the governments of the world, including the name of the chief executive and his party if any, the premier and his party, the party representation in the legislative bodies, and the officers of these bodies; (2) the character and aims of the various political parties in sixty countries; and (3) the party affiliations and tendencies of the leading newspapers in each country. With this information available, the American reader should be in a better position than formerly to follow intelligently the current newspaper and magazine articles on foreign politics and to interpret quotations from the foreign press.

Two pamphlets presenting *Proposals for Reform in Local Government* (pp. 57 and 39) have recently been issued by the Ministry of Health for England and Wales and the Scottish Office. These are based on proposed changes in the system of local finance, involving a reduction of local rates on productive property and an increase of parliamentary grants. The changes in local government proposed are the abolition of special local authorities for poor relief, highways, and (in Scotland) education, and the addition of these functions to the work of the county boroughs and county councils.

Two current books on Russia and its recent leaders are *Lenin*, by Valeriu Marcu (Macmillan, pp. 411), and *The Real Situation in Russia*, by Leon Trotsky (Harcourt, Brace and Company, pp. xxv, 364). The former is a well written but laudatory biography of the chief figure of the Russian revolution, who is regarded by the author as the outstand-

ing man of this generation and stronger than any figure of the French revolution. It is clearly the best biography of Lenin in English. Trotsky's book, which is translated by Max Eastman, is largely a defense of his policies and actions and an attack on Stalin. The work is illustrated and documented with official papers, correspondence, and public speeches.

*Danzig, Polen, und der Völkerbund*, by Hans Adolf Harder (George Stilke, pp. 134), is a study of the relations between the free city and its neighboring states, with particular reference to the petty disputes with Poland. The author is of the opinion that, in general, the League of Nations has fulfilled its task as protector of the city and its constitution.

The relations between the various members of the British Empire are discussed in Dr. Giambattista Mazzoleni's study of *L'Odierno Impero Britannico sua configurazione costituzionale ed internazionale* (Ufficio presso la R. Università di Pavia, pp. 148). The author, in general, keeps to statements of fact and leaves theories and prophecies aside. The result is a clear, orderly presentation of a complicated and elusive subject.

Teachers of English government looking for interesting biographies to assign students should not overlook *Disraeli: a Picture of the Victorian Age*, by André Maurois (D. Appleton and Company, pp. xiii, 378). Without distorting essential facts, the author has woven the life of England's great prime minister into a charming novel which makes the remarkable figure live again in the minds of the reader.

#### INTERNATIONAL LAW AND RELATIONS

The second volume of *Survey of International Affairs, 1925* (pp. x. 486), by C. A. Macartney and others, has been published by the Oxford University Press (American Branch) under the auspices of the Royal Institute of International Affairs. The first volume was noted in the *Review* for May, 1928 (p. 489). The present volume deals, first, with world affairs in general, under the headings of security, disarmament, economic and social coöperation, with special reference to the lapse of the Geneva protocol, the Locarno conference and resulting treaties, the arbitration treaties concluded in 1925, the work of the International Labor Office, intellectual coöperation, codification of international law, traffic in opium, and the health organization of the League of Nations. Then follow other parts devoted to important foreign relations in

Europe, the Far East, and the American continent. Practically all of the section on the Far East is devoted to Chinese affairs. Appendices contain the text of the Locarno pact and Article 27 of the Mexican constitution of 1917. The *Supplement* (pp. 235) to the *Survey*, compiled by V. M. Boulter, contains a detailed chronology of events and treaties from January 1, 1920, to the close of 1925. Students of international law and those interested in foreign affairs in general cannot afford to overlook this valuable mine of accurate and intelligent information. The Oxford University Press has also published a small volume on *Learning and Leadership* (pp. 111), by Alfred Zimmern, which is best described by its sub-title as a "study of the needs and possibilities of international intellectual coöperation." In the first chapter the author discusses the political, economic, and social interdependence of the world, and the problems involved in the exercise of intelligent popular control over a complicated environment. Next follows a summary of the various stages of public education from the pre-school period to the university, with emphasis on the part played by each in the advancement of international intellectual coöperation. The last two sections deal with the importance of knowledge in public affairs, the value of organized coöperation in advancing knowledge, and the dangers of over-specialization in education.

Some fourteen addresses and articles by Professor A. Pearce Higgins, of Trinity College, Cambridge, who lectured in the United States during 1927, have been published by the Cambridge University Press under the title *Studies in International Law and Relations* (pp. viii, 314). The first four studies deal with the interdependence of international relations and international law, the others with such subjects as the papacy and international law, the Locarno treaties, the law of nations and the war of 1914, retaliation in naval warfare, and the position of defensively armed merchant ships. Although regretting "the necessity that states should be compelled to have recourse to this expedient," Professor Higgins concludes that "from the standpoint of international law the legality of defensively arming merchant ships as aids to their legitimate resistance to capture appears established." Some other recent books dealing with international law and diplomacy are *The Recognition Policy of the United States Since 1911*, by Taylor Cole (Louisiana State University, pp. xi, 104); *Problems in International Understanding* (University of Washington Book Store, pp. iv, 199), including lectures delivered at the University of Washington by Gra-

ham H. Stuart, Harley F. MacNair, and others, and edited by Charles E. Martin and Edith Dobie; *The War Debts; An American View* (Macmillan, pp. vii, 173), by Philip Dexter and John H. Sedgwick; and *The Interpretation of Treaties* (Columbia University Press, pp. 288), by Tsune-Chi Yü. The latter is a painstaking study, based upon an analysis of about 300 cases, of the standards of interpretation, the sources of evidence, and the rules of construction, including the principles of high purpose, morality, fairness, protection against fraud, liberality, international law, and the doctrine of *uberrima fides*.

The Division of International Law of the Carnegie Endowment for International Peace has recently brought out as one of its Classics of International Law, edited by James Brown Scott, Samuel von Pufendorf's *De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo* (Oxford University Press, American Branch, pp. 30, xxii, 167; 30, xii, 147). This edition is published in two volumes, the first being a photographic reproduction of the 1682 edition, together with Walther Schücking's introduction (in the original German), while the second contains a translation of the 1682 edition by Frank Gardner Moore, and a translation of Schücking's introduction by Herbert F. Wright. There is also an index prepared by Professor Wright.

#### POLITICAL THEORY AND MISCELLANEOUS

Max Farrand's translation of Georg Jellinek's treatise about the declaration of the rights of man has led to such general acceptance of the views expressed therein that this new edition, published by Walter Jellinek after the death of his father, ought to be noted with interest by students of American political thought and constitutional history. The original study of Jellinek has been the center of much discussion. The new edition of *Die Erklärung der Menschen und Bürgerrechte* (Duncker und Humblot, pp. xx, 85) is based upon marginal notes and other additions which Jellinek prepared. The larger additions concern the idea of a declaration of duties alongside with the one of rights (p. 14), the recognition of a right to work as an inalienable right in France (p. 15), the struggle over religious liberty in the French National Convention (p. 30), the transformation of rights of citizens into rights of man (p. 42), the historical position of Roger Williams (p. 47), the development of the idea of religious toleration in Maryland (p. 51), toleration and intolerance in America (p. 54), the history of natural law (p. 57ff), and, finally, the connection between religious

liberty and the freedom of the press and the right of the people peaceably to assemble (p. 61). A good deal of the more recent literature has been taken into consideration, but neither Charles H. McIlwain's *American Revolution* nor Bernard Fay's *L'esprit révolutionnaire en France et aux États-Unis à la fin du XVIII<sup>e</sup> siècle* is among them. The conclusions of both these works must be of great importance to anyone interested in the migration of legal ideas and political institutions, even though he hold with Jellinek that "Die Litteratur für sich ist niemals produktiv, wenn sie nicht in den historischen und sozialen Verhältnissen einen für ihre Wirkungen vorbereiteten Boden findet." Jellinek also does not seem to appreciate the considerable influence which the Rev. John Wise exerted in solidifying that insistence upon a clear-cut separation of church and state and the freedom of conscience which Jellinek himself properly considered the first practical step toward developing the concept of natural rights of man. C. J. F.

Les Editions Rieder (Paris) have published a new volume of their *Les Textes du Christianisme* entitled *Les Documents Pontificaux sur la Démocratie et le Société Moderne* (pp. 282), which contains the important papal briefs, apostolic letters, and encyclicals since 1775, edited with a brief historical introduction (pp. 28) and notes by Georges Michon. The introduction concludes with the broad accusation: "à la vérité, l'Église n'a jamais su se dégager de la cause des puissants et des riches." The little volume ought to prove useful in connection with publications dealing with the relation of the Catholic Church to the state, especially in the United States, where the candidacy of Governor Smith for the presidency has brought the problem into the limelight. The conclusion seems to spring from these pages that the papacy and democracy are engaged in a mortal battle, but it may be doubted whether such a simple statement tells the whole story. A thesis published some time ago by Edward F. Murphy, entitled *St. Thomas' Political Doctrine and Democracy*, came to exactly the opposite conclusion. C. J. F.

*The Stammering Century*, by Gilbert Seldes (John Day, pp. xviii, 414), is a clever and readable narrative concerning the various fads, manias, extravagances, social Utopian theories, and religious fanaticisms which prevailed during the nineteenth century and the part which they played in American life. Among other figures and movements, the author includes the communities established by Rapp, Owen, and Noyes, the activities of the evangelists Moody and Sankey, Frances

Willard, Carrie Nation, Alexander Dowie, and a host of others who are less familiar. It is the author's observation that "in nearly every . . . case, the more gifted, the more intelligent, the more experienced classes were the first to accept an absurdity and the last to give it up. . . . The fact remains that one cannot distinguish the herd-majority from the civilized minority by ascribing to the former any special tendency to be taken in by charlatans. The minority is as susceptible to mass-suggestion as the majority."

A fascinating book is *Die Staatsidee Alexander Hamiltons in ihrer Entstehung und Entwicklung*, by Alex Bein (Berlin, Oldenbourg, pp. 186). Not only are Hamilton's well-known theories, as presented in *The Federalist* and in the Constitution itself, given a thorough discussion, but his lesser writings, such as the *Continentalist*, letters, and so on have been made to contribute to the subject. Above all else, the book shows Hamilton's ideas as the outgrowth of the times and conditions under which he lived. As a German critic has expressed it, "this work gives . . . the biography of an idea."

*Politik* (Quelle und Neuer, Leipzig, pp. 182), by Fritz Stier-Somlo is the sixth edition of a concise little handbook dealing with the theoretical and juristic aspects of the modern state as they are traditionally dealt with in German universities.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

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### AMERICAN GOVERNMENT AND PUBLIC LAW

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